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HISTORY AND ECONOMICS

THE MASERES LETTERS
1766—1768

THE MASERES LETTERS
1766—1768

EDITED WITH AN INTRODUCTION,
NOTES AND APPENDICES

BY

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PREFACE

The letters of Francis Maseres here published were found in the Hardwicke correspondence in the British Museum, among the papers of the Hon. Charles Yorke, the second son of the first Earl of Hardwicke. They have never before been published, in whole or in part; nor, so far as can be ascertained, have they ever been used by any writer on Canadian history.

They were written by Maseres from Quebec to correspondents in England during the years 1766-1768. They give consequently a fresh and vivid picture of Canada during those years—years with regard to which our sources of information have been none too full. In this respect, indeed, they stand in sharp contrast with Maseres' other writings, which deal almost wholly with the period subsequent to his departure from Canada. They throw light on some obscure passages in the politics of that time; and they serve to fill in the outlines of Maseres' very interesting personality. The letters of a Cambridge don pitchforked into the turbulent politics of Canada during the formative stage of British rule, could hardly fail to present points of interest and importance.

In preparing this volume for the press, I have been greatly indebted to the advice and criticism of Professor George M. Wrong and Mr. H. H. Langton, of the University of Toronto. This indebtedness I wish to acknowledge here *coram publico*.

W. S. Wallace

INTRODUCTION

The years from 1763 to 1774 were a critical period in Canadian history. The newly conquered province presented a multitude of problems which pressed for solution, and the solution of which was likely to be irrevocable. Chief among these was the vital question as to whether the Protestant Anglo-Saxon conquerors were to adopt toward the conquered Roman Catholic French the policy of repression which had just been carried through to such tragic consequences in Acadia, or the policy of conciliation which was eventually embodied in the Quebec Act of 1774.

The scales tipped at first toward the policy of repression. The Proclamation of 1763, whatever may have been the intention of those who framed it, operated to abolish the old French laws, and to give the colony, with smug Anglo-Saxon self-complacency, "the enjoyment of the benefit of the laws of Our realm of England". The instructions to General Murray, the first civil governor of the province, required him to model the courts of justice on those of Nova Scotia, a somewhat ominous exemplar; he was to admit of no "Ecclesiastical Jurisdiction of the See of Rome"; and "to the End that the Church of England may be established both in Principles and Practice, and that the said inhabitants may by Degrees be induced to embrace the Protestant religion", all possible encouragement was to be given to the erection of Protestant schools and churches. Thus, without any drastic Acadian expulsion, Quebec was to become gradually an English Protestant colony.

Very soon, however, opposition to this policy began to manifest itself. As soon as Lord Mansfield, for instance, had heard the details of the Proclamation of 1763, he wrote to

George Grenville, dissenting in the strongest terms from the policy embodied in it.[1] The ministers themselves, in 1764, hastened to amend the Proclamation by an additional instruction to the effect that it was not to take away from the French "the Benefit of their own Laws and Customs in Cases where titles to Land, and the modes of Descent, Alienation, and Settlement are in Question". Moreover, the Canadian administrators on the spot, Murray, Irving, Carleton, and Cramahé, with a unanimity truly remarkable, threw the weight of their influence into the scale in favour of a thorough-going policy of conciliation. Murray reported that the Canadians were "perhaps the bravest and the best race upon the Globe, a Race, who cou'd they be indulged with a few priveledges w^ch the Laws of England deny to Roman Catholicks at home, wou'd soon get the better of every National Antipathy to their Conquerors and become the most faithful and most useful set of Men in this American Empire."[2] Carleton took the view that "barring a Catastrophe shocking to think of, this Country must to the end of time, be peopled by the Canadian Race"[3]; and that the object of government should therefore be to attach the Canadians to the British Crown by conciliatory measures. He advocated the revival of "the Canadian Laws almost intire", the appointment of the Canadian *noblesse* to the Executive Council, and the formation of a French-Canadian militia, officered by French Canadians.

The handful of English-speaking merchants who had come into the province in the wake of the army—"four hundred and fifty contemptible sutlers and traders", as Murray, with his caustic pen, described them—strove vigorously to obtain the continuance of the policy outlined in the Proclamation of 1763. They demanded the whole of the English laws, the exclusion of Roman Catholics from public office, and the calling of a house of assembly, in which of course

[1] *The Grenville Papers*, London, 1852, vol. ii., pp. 476-8.
[2] Canadian Archives, Q 2, p. 233.
[3] Canadian Archives, Q 4, p. 130.

they would have had control. They appointed an agent to represent their views in London; they enlisted the support of their powerful London business connections; and they obtained even the support of the City of London. But despite their efforts they failed to counteract the forces working in the opposite direction; and in 1774 the Quebec Act brought into effect a policy of conciliating the French Canadians by giving them the civil laws and arbitrary government to which they had been accustomed, and by virtually establishing in the province of Quebec the Roman Catholic Church.

For the history of these critical years, the letters here published form an important document. Their author, Francis Maseres, was attorney-general of Quebec from 1766 to 1769, and as such played no small part in the events and deliberations which culminated in the Quebec Act; and they were written mainly to Fowler Walker, the London agent of the British merchants in Quebec. Though possibly not complete, for there seem to be gaps in the correspondence, they constitute a series of private letters almost unique, so far as the early days of British rule in Canada are concerned.

Francis Maseres was born in London on December 15, 1731. His father was Peter Abraham Maseres, a physician in Broad Street, Soho; and his mother was Magdalene, daughter of Francis du Pratt du Clareau. Both belonged to Huguenot families that had come to England at the time of the revocation of the Edict of Nantes. Feeling against the Roman Catholic Church must have been still bitter among English Huguenots in the middle of the eighteenth century; and Maseres appears to have imbibed during his early days a prejudice against Roman Catholicism which coloured his whole life, and handicapped especially his Canadian career. He was educated at Kingston-upon-Thames by the Rev. Richard Wooddeson; and on July 4, 1748, he was admitted to Clare College, Cambridge, as "pensioner and pupil to Mr. Courtail". His career at Cambridge was distinguished. He graduated in 1752, attaining the dignity of fourth wrangler;

and in the same year he won the first of the Chancellor's gold medals instituted by the Duke of Newcastle, and was admitted a scholar of the foundation of Joseph Diggons. He took his master's degree in 1755; and on September 24, 1756, he became a fellow of Lord Exeter's foundation. While holding this fellowship, he published in 1758 the first of his books, *A Dissertation on the Negative Sign in Algebra*, the forerunner of a series of books on mathematics which he continued to publish throughout life. In August, 1759, he resigned his fellowship, a year before its natural termination, and turned his attention to the practice of law. He had been admitted to the Inner Temple in 1750; and in 1758 he had been called to the bar from that Inn.

As a barrister Maseres was not an immediate success. He went the western circuit for a time; but he expresses the hope in one of his letters that the barrister who succeeded him had "better success than I met with". He then became a common pleader in the city of London. During this early period he appears to have been restless. The two letters to the Duke of Newcastle, printed below, one asking for the Duke's influence in obtaining the professorship of mathematics in the University of Cambridge, the other begging a recommendation for a commissionership of bankrupts, reveal him as an importuner of great men's favours. This perhaps should not be held against him; it was customary at that time for scholars to solicit the patronage of noblemen: even the great-hearted Samuel Johnson had "waited in the outward rooms" of the Earl of Chesterfield only a few years before. But it reveals the fact that, liberal and public-spirited as Maseres was in his ideas, he was yet essentially a product of that age of sinecure offices and Whig placemen in which he lived.

How Maseres came to be appointed attorney-general of Quebec is only partly clear. A marginal note on a letter in the Hardwicke correspondence attributes his appointment to the influence of the Hon. Charles Yorke, attorney-general in the Rockingham administration. It is evident, however,

from the letter written by Maseres to Fowler Walker on February 23, 1766, that Walker, who was the London agent of the British merchants in Quebec, had something to do with recommending the appointment. Walker must have been in close relations with Yorke, for it is difficult to explain otherwise the presence of so much of Walker's correspondence among Yorke's papers; and the probability is that Walker, who doubtless had known Maseres at the Inns of Court, and was aware that he had a native's command of the French language, recommended him to Yorke when it was decided to dispense with the services of George Suckling, who had been sent out as attorney-general of Quebec in 1764. If this is so, Maseres owed his appointment in the last analysis to the English mercantile element in the colony, whose agent and spokesman he afterwards became.

The mandamus for the appointment of Maseres as attorney-general of Quebec was dated March 4, 1766; but he did not sail for Canada until June 23. In the interval he devoted part of his time to familiarising himself with conditions in Canada; and he appears to have had several conferences with Guy Carleton, who was appointed lieutenant-governor of Quebec on April 7, 1766, and William Hey, who was appointed chief justice of the province on February 5, 1766. It was at the direction of Carleton and Hey that Maseres drew up and published, before leaving for Canada, the pamphlet entitled *Considerations on the Expediency of Procuring an Act of Parliament for the Settlement of the Province of Quebec*, which was the first of his publications on Canadian affairs. His thesis in this pamphlet is the inadequacy of the Proclamation of 1763, and the necessity of an Act of Parliament to deal with the four questions of the toleration of the Roman Catholic Church, the settlement of the laws, the settlement of the revenue, and, if necessary, the erection of a house of assembly. Roman Catholicism, in his opinion, should be merely tolerated; it would not be advisable to impose on the Canadians "the whole system of the laws of England, taken in the gross"; the calling of a house of

assembly would be for some time to come inexpedient; but it was desirable to promote "such measures as should gradually introduce the Protestant religion, the use of the English language, or the spirit of British laws". How far Carleton subscribed to the details of this program is uncertain; many years later, in 1809, when Maseres republished this pamphlet in his *Occasional Essays*, he took care to absolve Carleton and Hey from responsibility for the minor features of the pamphlet. But it is clear that in 1766 there must have been substantial agreement among the three men.

Hey and Maseres reached Quebec, by the same ship, in the beginning of September. Carleton, who came by way of New York, arrived a couple of weeks later. Maseres' first impressions of Canada were favourable. "We have been much delighted," he wrote, "with the appearance of the country, which we think, or at least I do, more beautiful than England itself." He reported that he had been "very civilly received by both French and English", and that "the English and French agree together tolerably well and speak well of each other, but there are great animosities between the English themselves one with another".

Maseres took the oath of office as attorney-general on September 26, and immediately entered on his duties. The post of attorney-general did not at that time carry with it a seat in the Council, though there was no bar to the admission of the attorney-general to the Council on other grounds, and at a later date Carleton recommended Maseres for admission. The attorney-general in 1766 was merely the Crown's attorney and legal adviser; his duty was to prosecute for the Crown, and to give advice when called upon. The profits of the office arose partly from the salary, which was £200 a year, and partly from the fees, which were charged, under the commission granted to Suckling in 1764, on the basis of those charged in the other provinces of North America. The fees were considerable, being levied whenever the attorney-general attended the Council to give advice, drew up a legal instrument or report for the Crown, or

appeared in court on the Crown's behalf. Carleton was strongly opposed to this system of fees, and one of his first official acts was to issue a proclamation relinquishing all those attaching to his own office; but Maseres, though a man of means, betrayed no symptom of following his example. Over and beyond his official duties, the attorney-general was permitted to carry on a private practice; and during his first year in Canada Maseres' income from this source amounted to between £200 and £300. In all, his profits in Canada amounted to nearly £700 per annum, no inconsiderable sum in those days.

From the accounts for fees which Maseres presented to the British Treasury, it is possible to reconstruct, to a large extent, his life in Canada on its official side. The first case which he had to prosecute in the courts, apart from some minor actions for assault and battery and for maintaining a nuisance, was what he calls "the trial for the cause of the rum-duties". This was an action against a merchant named Dupré, who, among others, had refused to pay the duties imposed on rum, spirits, and wines imported into the province. These duties were based on a proclamation issued by Irving in July, 1766, in consequence of orders received from the British Treasury laying down a specified scale of import duties for spirituous liquors. Maseres, who prosecuted, did not attempt to justify the duties on the ground of any power residing in the Crown to impose taxes on the province, but defended them as a tax legally established under the French régime and now transferred by right of conquest to the British Crown. Both he and the chief justice recommended the jury to find a special verdict, and to leave the point of law to the court to decide. The jury, however, being evidently at one with the American colonists to the south in their opposition to arbitrary taxation, declined to do this, and brought in a verdict of not guilty. Maseres himself was doubtful as to the legality of the duties, and expresses uncertainty as to whether the chief justice would have found them valid. But in maintaining that the jury was bound

to find a special verdict, he greatly offended some of the merchants—"pretended patriots", he dubs them; and so experienced at the outset something of those petty and rancorous enmities which prevailed in the small community of Quebec.

Another case with which Maseres had to deal soon after his arrival, and which still further embroiled him in the "infinite animosities" with which the province seethed, was the Walker affair. Before Maseres was sworn in, in fact, Thomas Walker, a former magistrate of Montreal, who had been on December 6, 1764, the victim of a dastardly assault resulting in the loss of his ear and in no less than fifty-two contusions, placed in his hands a deposition of George McGovock, a soldier of the 28th Regiment, giving information against a number of officers and others as having been implicated in the assault. The affair had arisen from the ill-feeling between the civilian and military elements in Montreal. An officer of the 28th Regiment, a Captain Payne, had been billeted on the house where one of Walker's fellow-magistrates, Francis Knipe, lodged. It was a rule that magistrates were exempt from billeting; and when Payne refused to vacate his rooms, Walker ordered his arrest, and had him thrown into gaol. This incident appears to have born fruit, a few weeks later, in the assault referred to above. Walker and his wife were sitting at supper in the hall of his house in Montreal, on the evening of December 6, 1764, when a party of about thirty men broke in, disguised by means of blackened faces, crape masks, and miscellaneous costumes, and attacked him with a variety of weapons. According to his own story, they left him for dead. That the assailants were soldiers may be assumed from the fact that later in the evening Walker's ear was thrown into the orderly room of the 28th Regiment. General Murray immediately offered a reward of £200 for the discovery of the assailants; a great number of depositions were taken; and a number of soldiers were arrested on suspicion. But Walker became dissatisfied with the steps which were being taken to bring the offenders to justice.

On March 14, 1765, he appeared before a notary public, and made a formal protest against what he regarded, not wholly without reason, as an attempt on the part of the authorities to obstruct the course of justice. For this action he was dismissed from the magistracy by the Council. In the autumn of 1765 he went to London, and laid his complaints before the secretary of state, with the result that an order-in-council was passed, directing the governor to exert himself strenuously to bring Walker's assailants to book, and Murray was instructed to restore Walker to the magistracy. At the same time, a reward of one hundred guineas and a free pardon were offered by the Crown to any of the assailants who would turn King's evidence; and to this Walker himself added the offer of another hundred guineas.

It was this offer of a reward and a pardon which brought forth the deposition of George McGovock, who swore to having been present at the assault on Walker on December 6, 1764. On the strength of this deposition, Chief Justice Hey, on November 15, 1766, issued warrants for the arrest of Captain Daniel Disney, 44th Regiment, town major of Montreal; Captain John Fraser, 27th Regiment, deputy paymaster-general and one of the judges of the court of common pleas; Captain John Campbell, 44th Regiment; Lieutenant Simon Evans, 44th Regiment; St. Luc de la Corne, formerly a captain in the French service, and a Chevalier de St. Louis; and Joseph Howard, a merchant of Montreal. These six persons were arrested in their beds and committed to gaol. Bail having been refused them by the chief justice, a petition on their behalf was presented to Carleton, signed by a large number of both French and English, and among the latter several members of the Council, begging him to mitigate "the rigour of the law". Carleton promptly removed from the Council two of those who had signed the petition, Lieut.-Colonel Irving and Dr. Adam Mabane; but he made the concession of lodging the prisoners, in view of the condition of the common gaol, in the Château de Vaudreuil, a house which he hired for the occasion. In this château-

prison, which they denominated "the Bastille", the prisoners spent the winter of 1766-7. They were allowed much freedom, and they appear to have entertained lavishly, with the result that when Chief Justice Hey came up to Montreal in March, 1767, to hold the assizes, he found that they had won over to their side the great majority of the townspeople, and that Walker and his wife "were both under a most notorious and almost universal Prejudice".

The first bill of indictment brought before the Grand Jury was that against Evans. The evidence brought forward by Maseres was certainly strong enough to warrant a prosecution. Not only was there the evidence of McGovock, but there was also that of one James Case, who swore that he had seen Evans come out of Walker's house on the evening of December 6, 1764, together with the other assailants; and that of Henry Mirtz, a German recruit in the Royal American Regiment, who swore that he had been employed by Evans "in writing his french Letters to the Lady to whom he is now married", and that when she had reproached him for being concerned in the assault, he had replied that "it was a Coup de Jeunesse, and ought not to prejudice him in her opinion". Yet, much to the surprise of both Maseres and the chief justice, and to the intense disgust of Walker, who told the jurymen in court that he had expected nothing better from the moment he saw their names upon the panel, the Grand Jury threw out the bill, and Evans was discharged.

The only prisoner against whom a true bill was brought in was Major Disney, as he had now become. Why a true bill should have been found against him, and not against the others, is difficult to understand, except on the assumption that his was the only case it was safe to allow to go to trial. Certainly he had a strong defence. It consisted in an alibi, sworn to by Dr. Robertson, Madame Landrief, Mrs. Campbell, and Mrs. Howard, with whom he had spent the evening of December 6 at a party at Dr. Robertson's house. The evidence for the prosecution was simply that of Walker and his wife, who swore to having recognized Disney in disguise,

and that of McGovock. Unfortunately for the prosecution, McGovock proved to be a most unsatisfactory witness. In several important particulars he contradicted both himself and the Walkers. The chief justice formed the opinion that he could not have been present at the assault, and directed the jury to put his evidence aside. Maseres attempted to shake the case for the defence by pointing out that two of the witnesses, Mrs. Campbell and Mrs. Howard, were the wives of two of the accused, and that Dr. Robertson and Madame Landrief were both interested persons; but with no avail. After an hour's deliberation, the jury brought in a verdict of not guilty.

Chief Justice Hey, in reporting the trial, expressed himself as perfectly satisfied with the verdict. He regarded McGovock as a perjurer. Such, however, was not the view of Maseres. "I, for my part," Maseres writes, "do not see any reason to disbelieve him, or to think him as an abandoned perjured villain." The discrepancies in McGovock's evidence may perhaps be attributed to the very natural confusion of an ignorant soldier in the witness box, and the fact that nearly two years and a half had elapsed since the assault on Walker had taken place. It is, moreover, a significant fact attested by entries in Maseres' accounts for fees, that before the trial an attempt was made to get rid of McGovock by poison. Injured innocence does not usually resort to such means of defence.

The Disney trial gave rise to a crop of new actions. Several of the accused, including Disney, brought civil actions against Walker for a malicious prosecution; and the foreman of the Grand Jury brought an action against him for defamation. The Grand Jury of September, 1767, which contained several members of the previous Grand Jury, brought in an indictment for perjury against McGovock. But all these actions failed. There seems almost to have been a conspiracy to end the affair by bringing in a verdict of not guilty all round. And there the matter rests to this day. The identity of Walker's assailants must have been known, both

in 1767 and long afterward, to many persons in Quebec and Montreal; but nothing has ever come to light which enables one to solve the mystery.

The underlying cause of the affair was undoubtedly the lawless character of the British troops in the province, of which further ample evidence is to be found in the accounts of Maseres for fees. Nearly half the entries in these accounts are for prosecutions of the military, both officers and private soldiers, for offences of a civil nature. In the single month of October, 1766, there was an action against the adjutant of the 52nd Regiment and others "for the murder of Donald Mackenzie by a cruel whipping"; an action against Lieutenant Smith of the 52nd Regiment "for a battery committed upon Mr. Malcolm"; and two actions for battery against Jeremiah Austen, a soldier of the 52nd Regiment. All these actions were successful. Later accounts are besprinkled with prosecutions against the military for theft, burglary, rape, and even murder. The reference which Maseres makes, in one of his letters, to the "violent gentlemen of the army" was apparently no hyperbole.

Great was the odium that Maseres incurred among the military owing to his connection with the Walker case and these other prosecutions. Evidence of this odium is furnished by the attack on him by Joseph Howard in the *Quebec Gazette* of March 31, 1768.[1] The first public attack came however from another quarter, from an element among the English civilian population which resented his attempt to introduce into the province the English bankruptcy laws. In the autumn of 1767, Maseres was consulted by a client named Solomons, a Jewish trader who had been ruined by losses sustained during the Conspiracy of Pontiac, and who wished to come to a settlement with his creditors. Maseres recommended him to get one of his creditors to apply for a commission of bankrupts; and Carleton, acting on the advice of Maseres and Hey, granted this commission. It seemed reasonable to suppose that the laws relating to bankruptcy

[1] See Appendix B.

were as much introduced into the province as any other part of the laws of England; and it might have been expected that the British merchants, who professed themselves so jealous of their heritage of English law, would have welcomed them. But with that frank inconsistency which characterized them whenever they thought their interests affected, a great number of them addressed a remonstrance to Carleton against the introduction of these laws. They held the conditions of trade in Canada, and especially in western Canada, to be such that these laws, if enforced, would drive into bankruptcy and idleness many who, given time, could redeem their obligations. Maseres replied by drawing up for Carleton a "short view of the laws of England relating to bankrupts", and appended answers to the objections of the memorialists. In view, however, of the opposition, Carleton withdrew the commission which he had granted, and withheld action until he should receive the instructions of the British ministry on the subject. Meanwhile, William Grant, a prominent merchant of Quebec and Montreal, asked leave of Maseres to publish his "short view" of the bankruptcy laws. Maseres acquiesced, and the paper appeared in the *Quebec Gazette* of December 10 and December 17, 1767. It immediately drew forth a reply, published in the two following numbers of the *Gazette*, and composed, according to Maseres, by George Suckling, his predecessor as attorney-general, and Thomas Aylwin, a justice of the peace in Quebec.[1] This reply, with its personal allusions, affords some idea as to the amenities of public life in Canada in the early days of British rule.

An important phase of Maseres' work as attorney-general lay in his preparation of various reports called for by the lieutenant-governor and Council. The first of these had been an abstract of the edicts of the King of France relating to the duties on brandy and rum, which was forwarded to England by Carleton in December, 1766, together with an account of the trial for the rum-duties. Maseres was next

[1] See Appendix C.

employed to draw up a report on the conditions under which the St. Maurice forges had been leased during the French period. This was in connection with the new lease of the forges to Christopher Pelissier of Quebec and eight others in 1767. Both these reports were afterwards included by Maseres in his *Collection of Several Commissions*, and are of great interest from the standpoint of economic history. In the same period he drew up a recapitulation of the proofs concerning the rights of François Joseph Cugnet and Jean Taché in the seigniories of the mainland, isles, and islets of Mingan and Anticosti, in connection with the claim submitted by Cugnet and Taché for the decision of the Lords of Trade.

But the most important report on which Maseres was employed was that concerning the state of the laws and the administration of justice in the province. On August 28, 1767, the Privy Council passed a resolution, which was afterwards embodied in an order-in-council, requiring a report to be submitted by the governor, the chief justice, and the attorney-general of the province, regarding the defects of the system of judicature, and the amendments in their opinion necessary. If there was lack of agreement, minority reports were to be submitted. Maseres was apparently delegated to draw up the joint report. He bestowed upon it a great deal of time and pains; and it was not until February, 1769, that it was ready to be submitted. When submitted it failed to meet with the approval of either Carleton or Hey. The exact grounds for their rejection are, unfortunately, not known. Maurice Morgann, who had been sent out by Shelburne to bring the report back, wrote to Shelburne as follows on August 30, 1769:

"Mr. Maseres, the Attorney General, was employed to draw up a Report in conformity to the order of council. It was the latter end of February before it was compleated, and when read was so extremely defective and improper that the whole was rejected with resentment by Mr. Carleton. It was indeed a strange report and in my judgment so improper that when I afterwards came to write one I could not avail myself of one single idea contained in it."[1]

[1] Shelburne Papers, vol. 66, p. 81. The letter will be found in full in Appendix E.

But this language misses the mark. The report was afterwards printed by Maseres in his *Collection of Several Commissions*; and, apart from a long and somewhat pedantic preamble reciting the various acts and instruments by which the English laws had been introduced into the province, it was merely an analysis of the four different methods of settling the laws of the province, with the advantages and disadvantages of each set out in detail. Maseres was unable to make up his mind as to which of these methods was best, and preferred merely to place the pros and cons before the ministers; though in 1768, as appears from his letters, he inclined to think preferable the method of reviving the whole of the French civil law. This, as it happened, was the method favoured by Carleton; and if Maseres had adopted this view in his report, it is conceivable that it might have met with Carleton's approval. The report was undoubtedly open to the objection that the order-in-council had called for definite recommendations, preferably in the form of specific ordinances. But to describe it as "extremely defective and improper" was absurd. What is difficult to understand is Maseres' change of mind after the rejection of his report. In his "Criticism of Governor Carleton's Report on the Laws of the Province", he came out in favour of the retention of only a part of the French civil law, especially that relating to land-tenure; and in this he fell in line with the English mercantile element which demanded the protection of English commercial law. The circumstances surrounding the rejection of the report are wrapped in some obscurity; and it must be confessed that the letters here published merely render that obscurity more profound.

In addition to the preparation of these various reports, the time of Maseres was occupied with other government business. Most of the ordinances published in 1766-1769 were drawn up by him; though it is worthy of note that his two most ambitious drafts, that for regulating the times and number of the sessions of the Supreme Court, and that for repairing and amending the public highways and bridges,

were not put into effect. In March, 1768, he was engaged also, together with Chief Justice Hey and Captain Holland, on a board of inquiry into the reasons for the suspension by General Murray of George Allsopp as deputy secretary of the province in 1766.

In July, 1769, Maseres appeared in the courts in the last important case he was to prosecute before leaving the province. This was the second trial for the rum-duties. In 1768 renewed instructions had been sent out from the Treasury to the receiver-general of the province for the collection of the scale of duties laid in 1766 on imported rum, brandy and wines. The Treasury was emboldened to take this action by the fact that the English courts, in an action brought against General Murray by some of the Quebec merchants, had upheld by implication the right of the British Crown to the duties levied under the French régime. As in 1766, however, a number of merchants refused to pay the duties; and action was begun against two of them, Werden and Mercier. Maseres and the chief justice again begged the jury to bring in a special verdict; but, as before, they declined either to do this or to bring in a verdict for the Crown. For the second time, therefore, Maseres had to admit defeat in his attempt to secure for the British Crown a revenue from arbitrary taxation.

The persistent failure which dogged Maseres' footsteps in Canada is remarkable. He lost his case in both trials for the recovery of the rum-duties; he failed in his prosecution of the prisoners in the Walker affair; his pet projects for the reform of the system of justice were blocked either by the grand juries or by the Council; and his chief effort, the report on the state of the laws and the administration of justice, was rejected by the governor. The effect of these repeated rebuffs is to be seen in a letter written to Fowler Walker in April, 1768:

"I confess I have been a good deal out of heart with respect to all schemes for the benefit of the province; and have not that hope and pleasure of seeing things mend and improve by quick degrees that alone can balance the disagreeable circumstances of living in a sort of banishment in this frozen kingdom of the Northwind."

His first favourable impression of life in Canada soon faded. In a letter to Charles Yorke, written in May, 1768, he says:

"As to myself, I have but a middling state of health, a bad scorbutic disorder keeping fast hold of me, and, I fear rather gaining ground upon me. The extreme cold of this climate (though not otherwise disagreeable to me) is bad for this complaint by stopping the perspiration. And as the ground is covered with snow during five months of the year, it is inconvenient during great part of that time to take the exercise of walking or riding; and in summer there are no great inducements to go a riding, as there are no downs to ride upon, no pleasant green lanes, no parks, or forests, or gentlemen's seats to go and see, or gentlemen to visit at them, but the whole is a strip of cultivated country of perhaps three miles deep along the banks of the river Saint Lawrence (which is in most places a mile and a half, or two miles wide), in which every bit of wood is cut down, so that there are neither hedges nor trees left, but only fields of corn or grass separated from each other by palings of dead wood, and behind this half-cultivated country the natural wild woods. And what is worse than all, there are few agreeable people here to converse with."

The relations between Maseres and Carleton, moreover, gradually changed complexion. At first, Maseres had impressed Carleton favourably. On December 24, 1767, Carleton wrote to Shelburne that "Men of the Stamp of our present Chief Justice and Attorney General"[1] were not always to be met with; and on February 16, 1768, he recommended Maseres for admission to the Council, though he qualified the recommendation by remarking on the difficulty of finding fit men for the office.[2] By September, 1769, however, he had so far changed his mind regarding Maseres that he thought fit to grant him leave of absence, on the apparent understanding that he was not to return to the province. The letter[3] in which he reported this action to Hillsborough is so important that it is reproduced here in full:

Quebec, 3rd October, 1769.

My Lord,

After repeated Solicitations, I have at last granted a twelve Months Leave of Absence to Mr. Maseres His Majesty's Attorney General for this Province.

Our Arrival here was much about the same Time; the summer following, this Gentleman, disgusted at the Severity of the Climate, and in Hopes of obtaining further Preferment at Home, applied for my Leave to return, which I then prevailed upon him to lay aside; for altho' I very soon discovered his strong Antipathy to the Canadians, for no Reason, that I Know of, except their being Roman Catholics, I attributed many of those narrow Prejudices, which he entertained, to his Want of Knowledge of the World, and his having conversed more with books than Men, I was in Hopes, Time and Experience would insensibly

[1] Canadian Archives, Q 5-1, p. 316.
[2] Canadian Archives, Q 5-1, p. 378.
[3] Canadian Archives, Q 6, p. 124.

wear these away and that from his speaking the French Language well, and from his Knowledge in our Laws, He would be indeed He might, have made himself Usefull here—

I am sorry to say, I was deceived in my Expectations and that Mr. Maseres has been so indiscreet, I judged it highly proper to yield to his Entreaties, and let him depart the Province, to which, I believe, he never desires to return; indeed as I understand He neither would have remained here so long, or wished to have gone Home Attorney General, if it were not for the Hopes of thereby paving his way to further Preferment. I would not however agree to his leaving it, untill the Report upon the State of the Laws and Courts of Judicature was compleated and sent away, and I sincerely wish, now he is gone, that some Opportunity may offer of placing this Gentlemen in a Situation more agreeable to his own Inclinations, and where the Fervor of his Zeal can be of no essential Disadvantage to the King's Service—

I have appointed Mr. Henry Kneller, the most Intelligent and sensible of the English Lawyers here, to act as Attorney General in the mean Time, and in Case an able Civilian, well acquainted with the French Language, cannot be found to supply his Place, I should be well Satisfied, if it was thought proper to bestow that Appointment upon him, who in many Respects is very deserving of it.

A Duplicate of the Report, sent by Mr. Morgan about ten Days ago, is getting ready with all possible Dispatch, and shall be forwarded by the first ship that sails After it is finished—

I am with much Esteem and Respect
Your Lordship's
Most Obedient and
Most Humble Servant
GUY CARLETON

The Earl of Hillsborough
One of His Majesty's Principal
Secretaries of State.

What the indiscretions on the part of Maseres were to which Carleton refers, one can only surmise. If he expressed himself as freely in private conversation in Quebec as he does in his letters, it is not surprising if he offended unnecessarily many persons. Possibly Carleton had in mind his attempt to influence the jury in the McGovock trial, to which Joseph Howard refers in his letter to the *Quebec Gazette* of March 31, 1768. Possibly he had in mind the publication of Maseres' "short view" of the bankruptcy laws, in apparent opposition to the policy already adopted by Carleton. But doubtless the chief source of indiscretion lay in Maseres' inveterate Huguenot prejudice against the Roman Catholic Church. Of that prejudice the present letters afford many illustrations. The most striking of these is perhaps the Veyssière incident. Veyssière was a former Recollet priest who had renounced Roman Catholicism, had been ordained a priest of the Church of England, and had been appointed, on the recommendation of the Bishop of London, to the living at Three Rivers.

Maseres, in whose breast there was more joy over one reformed priest that over ninety-and-nine persons who had been Protestants from birth, welcomed Veyssière with open arms; but Carleton, who entertained a poor opinion of the "little priest"—an opinion amply substantiated by Veyssière's later career as rector at Three Rivers—placed obstacles in the way of his entrance on his living, and induced the Rev. John Brooke, the chaplain at Quebec, to refuse to administer to him the necessary oath of abjuration. Brooke had been one of Maseres' earliest friends in Quebec; but so strongly did Maseres feel about the treatment accorded Veyssière that, on his own confession, he ceased thereafter even to speak to Brooke on the street. It may easily be imagined that such bigotry must have lowered Maseres greatly in the estimation of Carleton, in whose policy the conciliation of the Roman Catholic clergy was a cardinal feature.

Maseres shook the dust of Canada from his feet on September 28, 1769, barely three years after his arrival in the province. He must have reached England some time in December, only a few weeks before the tragic death of his patron Charles Yorke three days after his appointment as lord chancellor. Maseres returned to his rooms in the Inner Temple, and there, to all intents and purposes, he spent the remainder of his life. But if he never again set foot in Canada, his interest in Canadian affairs did not cease. He kept himself for many years *au courant* with the political situation in Canada; and he continued, until as late as 1809, to publish at intervals books and papers dealing with Canadian questions. He acted on several occasions as the agent of the British minority in Canada; he was consulted both by some of the ministers and by the House of Commons in regard to the Quebec Act; and later he championed the cause of Pierre Du Calvet against what he regarded as the arbitrary rule of Haldimand. He constituted himself, in fact, a sort of public mentor in England with regard to Canadian affairs.

Almost all Maseres' Canadian publications were issued under a veil of anonymity; and where definite proof of his

authorship is lacking, it is sometimes difficult to be certain as to the source of some of the lesser pamphlets occasionally attributed to him. But in the great majority of cases there is no room for doubt; in many the veil of anonymity is so thin that one wonders why it was assumed. The first product of his pen to see the light after his return to England was the pamphlet entitled *Considerations on the Expediency of Admitting Representatives from the American Colonies into the British House of Commons*, published in London in 1770. This little book has no particular reference to Canada; but it occupies a unique place in the early literature regarding modern British imperialism. The year 1772, however, saw the publication by Maseres of several books dealing directly with Canada. Chief among these was *A Collection of Several Commissions and other Public Instruments relating to the Province of Quebec*, in which Maseres brought together an admirable selection of documents of constitutional interest, including the draught of his rejected report on the laws of the province. Belonging probably to the same year is the pamphlet *Things necessary to be settled in the Province of Quebec, either by the King's order in Council, or by Act of Parliament*, in which is included the "Plan for a general assembly of the Freeholders of the Province of Quebec" drawn up in Quebec in 1768. The years 1772 and 1773 saw also the issue of a number of drafts of Acts of Parliament by Maseres. Two of these bore the title *Draught of an Act of Parliament for investing the Governour and Council of the Province of Quebec; without an Assembly of the Freeholders of the same, with a Power of making Laws and Ordinances for the Peace, Welfare, and good Government of the said Province, during the Space of Fourteen Years.* The first draft was four pages in length; the second, twelve. Belonging apparently to the same period is *A Draught of an Act of Parliament for tolerating the Roman Catholick Religion in the Province of Quebec, and for encouraging and introducing the Protestant Religion into the said Province, and for vesting the Lands belonging to certain Religious Houses in the said Province in*

the Crown of this Kingdom, for the Support of the Civil Government of the said Province; and for other Purposes; though the attribution of this pamphlet to Maseres is not beyond question. No doubt, however, attaches to Maseres' authorship of two pamphlets entitled *Draught of an Act of Parliament for settling the Laws of the Province of Quebec*, the first containing seventeen pages, and the second forty-two; for we know something about the circumstances attending the publication of these drafts. When Maseres issued the first, in August, 1772, he circulated privately a number of copies. One of these was sent to a prominent French-Canadian seigneur, Chartier de Lotbinière, who sent Maseres his criticisms in writing. Maseres thereupon drew up the second draft with a view to meeting these criticisms. This second draft came in for some strictures from F. J. Cugnet, a French Canadian official; and it was in reply to him that Maseres published in 1773 his *Mémoire à la Défence d'un Plan d'Acte de Parlement pour l'Etablissement des Loix de la Province de Quebec, dressé par M. François Masères, avocat Anglois, cy-devant Procureur-Général de Sa Majesté le Roi de la Grande-Bretagne en la ditte Province, contre les objections de M. François Joseph Cugnet, Gentilhomme Canadien, Secrétaire du Gouverneur et Conseil de la ditte Province pour la Langue Françoise.* This little book was written in French in order to combat the objections entertained by the French Canadians toward some of Maseres' proposals; and all these drafts were published with a view to influencing the course of the deliberations on the Quebec Act.

In 1775 and 1776 Maseres printed what was perhaps the most important of all his contributions to Canadian history, the so-called "Quebec Papers". The first volume of these papers was entitled *An Account of the Proceedings of the British, and other Protestant Inhabitants, of the Province of Quebeck, in North-America, in order to obtain an House of Assembly in that Province;* and the second volume, which was in the nature of an appendix to the first, was entitled *Additional Papers Concerning the Province of Quebeck.* These

volumes contain a vast amount of original material of value for the early history of British rule in Canada; the statements in them are sometimes to be accepted with reserve, on account of the author's bias, but apart from this they are of first-rate importance. The "Quebec Papers" were followed in 1777 and the subsequent years by the three volumes of *The Canadian Freeholder*. This work was in the form of a dialogue between an Englishman and a Frenchman who had settled in Canada; and its object was to show the dissatisfaction with the Quebec Act prevailing in Canada, and with the Boston Charter Act prevailing in the other American colonies, to demonstrate the expediency of repealing both these Acts, and to advocate the adoption of more liberal measures, if a reconciliation with the American colonies was to be achieved. Maseres, however, was not a Walter Savage Landor; and it must be confessed that this imaginary conversation, protracted through three large volumes, proves prolix and tiresome.

In 1784 several Canadian pamphlets were published in England which are sometimes attributed to Maseres. A *Copy of a petition from the British inhabitants of the Province of Quebeck, to the Commons House of Parliament in Great Britain, in the Year 1783*, and *Questions sur lesquelles on souhaite de savoir les réponses de Monsieur Adhémar et de Monsieur De Lisle et d'autres Habitants de la Province de Québec* are both thought by Philéas Gagnon, the bibliographer, to have been the work of Maseres. There is reason to believe also that Maseres had a hand in the preparation of Du Calvet's English *apologia*, *The Case of Peter Du Calvet, Esq.*, printed in London in 1784. If so, these were the last of Maseres' publications on Canada for some time; for not until 1809, when he published his *Occasional Essays*, did he again touch in print on Canadian affairs, and in these essays there are only two Canadian papers, one dealing with the Canadian *noblesse*, and the other a reprint of the pamphlet issued by Maseres in 1766 before leaving for Canada.

Though Maseres' publications were perhaps his most

conspicuous contribution to Canadian affairs, his influence was exerted, after his return to England, in other ways also. In August, 1773, to use his own words, he "had the honour of waiting on Lord North by appointment at Bushey Park, to confer with him on the affairs of Quebec"[1]; and about the same period he appears to have been in communication regarding Canadian questions with Lord Dartmouth, Lord Mansfield, and Lord Apslie, the lord chancellor. In November, 1773, a committee of the British inhabitants of Canada applied to him to act as their agent in presenting petitions to the King and the Secretary of State praying for a house of assembly; and on January 4, 1774, he forwarded these petitions to Lord Dartmouth, with a cautiously worded letter, in which he disclaimed responsibility for them.[2] In May, 1774, when the Quebec Bill was coming up for discussion in the House of Commons, he was employed by the opponents of the bill to draw up a statement of "The Case of the British Merchants trading to Quebec";[3] and copies of this statement were circulated, in order to give weight to a petition which the merchants of the City of London were presenting to the House of Commons in opposition to the bill. In June, during the debates on the bill, Maseres was called before the bar of the House of Commons as a witness, and cross-examined at some length, together with General Carleton, Chartier de Lotbinière, Chief Justice Hey, and Dr. Marriott, the King's advocate-general.[4] After the passing of the Act, Maseres was employed also to present petitions from the Canadian merchants to the King, the House of Lords, and the House of Commons praying for the repeal of the Act.[5] Carleton reported that the Canadian merchants

[1] Canadian Archives, M 384, p. 194.

[2] Canadian Archives, Q 10, p. 8.

[3] This paper was reprinted by Maseres in the first volume of the "Quebec Papers", pp. 202-222. A copy is also to be found in the Dartmouth Papers, M 385, p. 393.

[4] See J. Wright (ed.), *Debates of the House of Commons in the Year 1774, on the Bill for making more effectual Provision for the Government of the Province of Quebec, drawn up from the notes of the Right Honourable Sir Henry Cavendish, Bart.*, London, 1839.

[5] Canadian Archives, Q 11, p. 98.

"intend a handsome Present in Cash to Mr. Maseres, with the Promise of a larger Sum, in Case he succeeds." But the payment of the "larger Sum" did not become necessary. The efforts of Maseres proved unavailing, either to prevent the passing of the Quebec Act, or to obtain its repeal. His opposition to the Act, nevertheless, was not without influence in strengthening the hands of its critics in the House of Commons; nor did it fail to exert a considerable effect on public opinion in Canada. General Haldimand, on his return to England in 1785, bore testimony that it was "highly necessary to discountenance the Correspondence carried on by the People stiling themselves deputies from Canada, and supported by Mr. Maseres and others, applying for a change of Government by the Establishment of a House of Assembly and other changes entirely contrary to the Interests of the King and the Happiness of His good Subjects in that Province."[2]

The last direct intrusion of Maseres into Canadian affairs was his advocacy of the cause of Pierre Du Calvet in 1784. Du Calvet was a French Protestant of Montreal who had been created a justice of the peace, but who had engaged in treasonable correspondence with the Americans during the Revolutionary War. General Haldimand had placed him under arrest in 1780, and had kept him in confinement, without trial, until 1783. The confinement of Du Calvet without trial was doubtless illegal; but he was, even more certainly, a trouble-maker and a traitor. Maseres, however, with that fatal failing for French Protestants and that lack of judgment and knowledge of human nature which he had shown in the case of Veyssière, took up the cudgels on behalf of Du Calvet. He financed both Du Calvet's publications and his law-suits against Haldimand. The amazing ex-Jesuit Roubaud, who acted as Du Calvet's secretary, has left a graphic picture of an interview which he had at this time with Maseres:

"During the whole course of this important conversation, Mr. Maseres explained himself in a tone of vehemence and agitation, which surprised me in an

[1] Canadian Archives, Q 11, p. 11.
[2] Canadian Archives, Q 25, p. 308.

Englishman. There was none of the national phlegm; it was Gascon vivacity and quickness; in a word, the most heated enthusiasm."[1]

After a time, Maseres cooled somewhat toward Du Calvet, and, if we are to believe Roubaud, withdrew from him his financial support.[2] When, however, Du Calvet was lost at sea in the spring of 1786, Maseres, with philanthropic generosity, undertook the charge of his son.

Maseres' life in England, except in so far as it had reference to Canada, may be dismissed here with a bare outline. In 1771 he was elected a fellow of the Royal Society. In 1773 he was made a cursitor baron of the exchequer, a sinecure post which he held until his death in 1824. Thomas Hutchinson, the ex-governor of Massachusetts, who called on Maseres in November, 1774, says that Maseres had actually been appointed one of the judges for India, but that he had refused the post, since a younger man had been named before him, and that the lord chancellor, Lord Apslie, had thereupon obtained for him the place of cursitor baron of the exchequer.[3] From this time onward the position of Maseres was assured. In 1774 he was made a bencher of the Inner Temple; in 1781 he was made reader, and in 1782 treasurer, of that society. From 1779 to 1783 he filled the position of deputy recorder of London. In 1780 he was elected by the court of common council senior judge of the sheriff's court in the City of London; and he held this office until 1822, only two years before his death.

Throughout life he continued his voluminous publications. He issued mathematical treatises, reprints of works on mathematics and optics, legal pamphlets, drafts of Acts for introducing a variety of reforms, historical tracts, and reprints of a number of rare books and pamphlets relating to English and religious history. A man of wealth and a bachelor, he played the part of financial patron to a goodly number of books with which he had no further connection.

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[1] Canadian Archives, B 206, p. 113.
[2] Canadian Archives, B 206, p. 186.
[3] P. O. Hutchinson, *The Diary and Letters of his Excellency Thomas Hutchinson, Esq.*, Boston, 1884, vol. i, p. 273.

To compile, indeed, his bibliography would be an almost hopeless task, owing to the anonymous character of so many of his publications, and the difficulty of determining the exact relation he bore to each, as author, editor, or patron. None of his books lives to-day, nor probably did they have a wide audience in his own time; but it is clear that he wrote them for neither profit nor fame, but merely for his own satisfaction and the good he hoped they would do.

About the Inns of Court he became a quaint and familiar figure. Charles Lamb describes him in his essay on "The Old Benchers of the Inner Temple" as still clinging at the beginning of the nineteenth century to "the costume of the reign of George the Second"; and the writer of the obituary notice of Maseres in the *Gentleman's Magazine* asserts that "he retained to the last the three-cornered hat, tye-wig, and ruffles".[1] An interesting glimpse of him in 1801 is afforded us in a letter written by Charles Lamb to his friend Thomas Manning:

"I live at No. 16 Mitre Court Buildings, a pistol-shot off Baron Maseres. You must introduce me to the Baron. I think we should suit one another mainly. He lives on the ground floor, for convenience of the gout; I prefer the attic story, for the air. He keeps three footmen and two maids; I have neither maid nor laundress, not caring to be troubled with them. His forte, I understand, is the higher mathematics; my turn, I confess, is more to poetry and the belles lettres. The very antithesis of our characters would make up a harmony."[2]

A great part of the year Maseres spent in chambers, dining in term time in the Temple hall, and out of term at his house in Rathbone Place. The remainder of the year he spent at Reigate, Surrey, where he had a country house; and it was here that he passed away on May 19, 1824, in his ninety-third year.

In spite of his prejudices and defects, Francis Maseres was one of the ablest men who came out to Canada in the early days of British rule. On his views with regard to Canadian affairs, it is perhaps not possible to form a categorical judgment. They were never put to the practical test of experience. Nor is it fruitful to speculate on what would

[1] *The Gentleman's Magazine*, 1824, pt. i, pp. 569-573.
[2] A. Ainger (ed.), *The Letters of Charles Lamb*, London, 1888, vol. i, p. 196.

have happened had they been applied at the time of the passing of the Quebec Act. It is sometimes argued that, had the conciliatory policy of the Quebec Act not been adopted, Canada would have been lost to Great Britain during the American Revolutionary War, especially after the alliance of the revolting states with France. On the other hand, it is contended that, had the policy of Maseres been followed, some of the religious and constitutional problems which have vexed Canadian history might have been lessened or eliminated. But the decision of these, and similar, disputed questions may be left to the discernment of clairvoyants; it is not possible to determine what would have happened if something else had been different. What is certain is that Maseres' ideas were based on no superficial knowledge of the situation in Canada. The French that Maseres spoke was the French of the reign of Louis Quatorze, not the French of the Paris or Quebec of his own day; but he was one of the very few officers of government able to converse freely with the new subjects, and his knowledge of their sentiments was consequently not inferior to that of others. Nor were his views insincere or unconsidered. Jeremy Bentham many years later hit off one of the outstanding features of Maseres' character when he described him as "one of the most honest lawyers England ever knew".[1]

In estimating the place of Maseres in Canadian history, it must be admitted that his influence on the course of events was not great. No considerable measures are associated with his name; nor was his influence noticeable either on Carleton or on the ministers of the Crown in England. In one direction, however, he did exert an influence—an influence which has been hitherto ignored. There is no doubt that the moderation of his views exercised a beneficial restraint on the turbulent and headstrong politics of the English mercantile element in the colony, whose champion in some sense he was. Without this restraint faction might have risen

[1] J. Bowring (ed.), *The Works of Jeremy Bentham*, Edinburgh, 1842, part xix, p. 59.

much higher than it did in Canada during the troublous years of the American Revolution. Maseres was a firm believer in the British Empire, and his championship of the cause of the merchants of Quebec and Montreal was a safeguard and guarantee of the loyalty of a large part of them. Herein perhaps lay his chief positive contribution to the making of Canada.

LETTERS

To the Duke of Newcastle.[1]

My Lord,

I hope your grace will excuse the liberty I take in addressing you in this manner to beg the favour of your grace's recommendation to the University of Cambridge for the professorship of Mathematics, which is lately become vacant by the death of Professor Colson.[2] The right of election to it is in the heads of colleges; and there is, as I am informed, but one other candidate for it, who, not being yet a master of arts, is incapable of being elected to it without first having that degree conferred upon him by virtue of a special mandate. This circumstance together with the favours I have already received from your grace, both when I had formerly the happiness of obtaining your grace's first medal at Clarehall and lately when I had the honour of being permitted to dedicate to your grace a book of Algebra[3] I published last year, induce me to hope for your grace's patronage on this occasion. I propose to do myself the honour of waiting upon your grace to know your pleasure in this matter as soon as your grace returns from the country; and am, with the greatest respect, your grace's most obliged, and most obedient,

humble servant,

Francis Maseres.[4]

Broad Street near Golden Square.
Dec: 26th, 1759.

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[1] Thomas Pelham Holles (1693-1768), first Duke of Newcastle, was nominal head of the administration in Great Britain in 1759. In 1752 Newcastle had instituted the Chancellor's classical medal in the University of Cambridge; and Maseres, on winning the first medal, had received it from Newcastle in person.

[2] John Colson (1680-1759) had been Lucasian Professor of Mathematics in the University of Cambridge from 1739 to his death. His translation of Agnesi's *Analytical Institutions* was published in 1801 through Maseres' generosity.

[3] *A Dissertation on the Negative Sign in Algebra; containing a Demonstration of the Rules concerning it*, London, 1758.

[4] It may be noted here that Maseres, except when writing in French, spelled his name without the grave accent on the penultimate.

To the Duke of Newcastle.

Inner Temple, May 5th, 1760.

My Lord,

The favourable assurances of your grace's regard with which I was honoured when I waited upon your grace at Claremont have encouraged me to trouble your grace with a second application on the present occasion. It is to request your grace's interest for procuring a Commissionership of bankrupts that is likely soon to become vacant by the resignation of Mr: Hatsel[1]. This place is in the disposal of my Lord Keeper, with whom I doubt not your grace's recommendation would be of the greatest weight, unless his Lordship should be already engaged; and in that case, my desire is only to be put upon the list for the next vacancy. The necessity of using expedition in this affair, to prevent the sollicitations that may be made to my Lord Keeper in behalf of other persons, has emboldened me to take this method of applying to your grace. But, that I may not trespass too far upon your grace's time, which I know to be employed on objects of the greatest importance, I beg leave to subscribe myself, with the greatest respect,

Your grace's most obedient
and most humble servant,

F: Maseres.

[1] John Hatsell (1743-1820), afterwards chief clerk of the House of Commons.

To Fowler Walker, Esq^r.[1]

Sunday, Feb: 23, 1766.

Dear Sir,

Mr. Hey[2] tells me that a memorial is preparing to be presented to the Secretary of State, or rather to the king in council, from several persons of Quebec now in town, in which it is intended to insert some complaints against Mr: Suckling.[3]

[1] Fowler Walker (1732-1804), an English barrister-at-law, was at this time the London agent of the British merchants and traders in the province of Quebec. He was the son of Fowler Walker, a nonconformist minister of Abergavenny, Monmouthshire, author of *A Defence of Infant Baptism*, published in London both in English and Welsh in 1732. Having matriculated at Magdalen College, Oxford, on October 9, 1760, at the comparatively late age of twenty-eight, Fowler Walker the younger was admitted to the Inner Temple in 1761, and to Lincoln's Inn *ad eundem* on November 2, 1762 (J. Foster, *Alumni Oxonienses*). On April 19, 1765, he was appointed "Agent for the Province of Quebec" by two Quebec merchants, Daniel Bayne and William Mackenzie, who had been deputed by "the merchants traders and principal inhabitants of the Citys of Quebec and Montreal" to engage on their behalf an agent to solicit their affairs in London; for the correspondence relating to this appointment, see Appendix A. This action of the merchants was a counterblast to the step taken by General Murray in October, 1764, in sending H. T. Cramahé to London to represent the views of the French Canadians. How long Walker retained the post of agent is uncertain. He held it at least until 1769. The last trace of his connection with Canada is the appearance of his name, together with that of J. Dunning, at the foot of a printed brief, preserved in the British Museum (B.M. Add. 36, 215), in the appeal from Quebec between Eleazar Levy and Daniel Robinson and others, dated July 9, 1771. In November, 1773, when the British merchants in Canada had a petition for a general assembly of freeholders to present, they forwarded it through Francis Maseres, who had left Canada four years before. Walker died at Bath in 1804.

[2] William Hey (17-?-1797) had been appointed, only a few days before the writing of this letter, chief justice of the province of Quebec, in the place of William Gregory, dismissed. The mandate for the appointment is dated February 3, 1766; although the actual commission was not issued until September 25, after Hey's arrival in Quebec. Hey discharged the very difficult duties of his office with singular tact and good judgment until 1773, when he was permitted to return to England, partly on account of his health, and partly that he might be consulted in the draughting of the Quebec Act. His advice, with that of Carleton, was partly instrumental in determining the form which that Act took. While in England, he was elected a member of parliament for Sandwich. In April, 1775, he returned to Canada, but only for a few months; and in August, 1776, his resignation as chief justice was accepted. The following year he obtained the position of a commissioner of customs in Great Britain, and he occupied it until his death in 1797. A number of his letters to Fowler Walker are in the Hardwicke Papers in the British Museum (B.M. Add. 35, 915, ff. 121, 162, 278, 312).

[3] George Suckling had been appointed attorney-general of the province of Quebec under a commission dated August 24, 1764. He appears to have given satisfaction neither to the Governor nor to the inhabitants. Murray, referring to Gregory and Suckling, complained to the Lords of Trade that "our chief Judge and Attorney General are both entirely ignorant of the Language of the Natives, are needy in their Circumstances and tho' perhaps good Lawyers and Men of integrity, are ignorant of the World, consequently readier to Puzzle and create

By the declarations you have made to me of your kind wishes in my favour I am induced to apprehend that a regard to my interest has some influence on this occasion with you to make you more earnest in forwarding these complaints than you otherwise would be. Now it would be a very disagreeable reflection to me to think that Mr: Suckling was removed upon my account. I therefore desire to be considered as quite out of the case. I am quite reconciled to the disappointment, though, if the vacancy should be made, I am ready to accept it. I originally entertained thoughts of this employment upon a belief that a full resolution had already been taken by all the ministers to make the vacancy before I was thought of: I still desire to accept it upon the same grounds, that is, only upon a resolution taken by the ministers, and sollicited by those who apply to them, without the least regard to my interest, to vacate the employment. In this case I am ready to accept it; otherwise I had rather be without it. I therefore desire you would proceed in this business in exactly the same manner as if I was dead or had positively refused this employment; and shall be equally in all events your most

Obedient humble servant

F: Maseres.

P.S. I sent you the five guineas subscription to the Sufferers of Montreal[1] yesterday by Mr: Hay. I hope you have received them.

Difficultys then to remove them" (Canadian Archives, Q 2, p. 378). On the other hand, Thomas Walker and his friends among the British merchants in the province were dissatisfied with the want of vigour shown by Suckling in bringing to justice the perpetrators of the famous assault on Walker in his house in Montreal in 1764 (see L. W. Sicotte, "The Affair Walker", *Canadian Antiquarian and Numismatic Journal*, October, 1915, p. 207). Thomas Walker, who was in London in February, 1766, was apparently one of the "several persons of Quebec" referred to above. On March 6, 1766, official notice was sent to Suckling by the Secretary of State that, there being no further occasion for his services as attorney-general, Francis Maseres was appointed to succeed him. Suckling remained in Canada for some years after his removal from office. He prosecuted for the Crown in the McGovock trial in 1767; and, according to Maseres, he was one of the joint authors of the attack on Maseres in the *Quebec Gazette* of December 24 and 31, 1767. The dates of his birth and death are unknown.

[1] The reference is to the disastrous fire at Montreal on May 18, 1765. This fire was the subject of one of the earliest pamphlets printed in Canada, the *Case of the Canadians at Montreal, distressed by a Fire on the 18th of May, 1765*, Montreal, 1765.

To Fowler Walker, Esq^r.

Quebec, Sept: 14, 1766.

Dear Sir,

I am obliged to you for your favour of the 30th of June, which I received yesterday. It was left for me at Mr: Hey's house in the upper town while I was out, and came I believe from Captain Cockson of the Eltham, which arrived here yesterday morning early. Mr: Hey and I arrived here last Tuesday afternoon after a passage of eleven weeks and more than one day, having set sail from Plymouth on Monday the 23^d of June at nine o'clock in the morning. The winds were contrary during almost the whole passage, and we were several times overtaken by sudden and very smart squalls: yet upon the whole we had pleasant weather, the bad days being not more than a dozen at different times in the whole voyage; and, which was of most importance, the weather was both pleasant and moderate during the greatest part of our passage up the river S^t Lawrence, which is certainly a river of a difficult and dangerous navigation: I said the greatest part of the passage because during one or two days we were troubled with thick fogs, which in all parts of the sea are bad things, but more especially when one is near land. And accordingly we ran bump ashore upon the South shore of the river over against that part of the North shore which is called Cape St: Nicholas, some leagues to the East of Remousky and the Ances Matanes. This happened at three o'clock in the morning when it was both dark and foggy. It waked us suddenly out of our sleep and alarmed us all a good deal, especially poor Mrs. Hey, who could not get rid of her apprehensions of a second accident of the like kind during the remaining part of our voyage which might be about ten days. It happened luckily that it was at that time low water, or pretty near it, and the shore was a pretty bold one, so that at the time we struck upon it, the water at the stern of the ship was twelve feet deep, by which means the ship was in a great measure water-borne, which prevented her from lying down on her broad side, or breaking by her own weight; and

another very fortunate circumstance was that there was scarcely a breath of wind. As the tide came in, the ship began to resume her upright position, from which she had at first declined to the Larboard side, though not in any great degree. At the same time the principal anchor was carried out to sea behind the Stern of the ship, and the cable of it was made as tort [*sic*] as possible by endeavouring to heave the ship toward it. And a breeze springing up which blew gently from the land, (towards which the head of our ship was turned, not obliquely, but directly, as if we had intended to sail into the woods with which the land is covered,) we were afloat and out of danger by about seven or eight o'clock, having received no other damage but our fright and loss of sleep, and to myself a slight cold which I caught by standing so much upon deck in that foggy and damp weather to see so new a sight, and to observe by what methods we were to get out of our scrape. And we were under sail again between ten and eleven o'clock. We were all Seasick at first, as you may suppose, and for about ten days or a fortnight; Mr: and Mrs: Hey were much more so than I; but mine, though less in degree, continued for about three weeks. Mrs: Hey bore the voyage upon the whole very well and with great spirit. She and Mr: Hey and myself are all now very well, and have been very civilly received by both French and English, from which circumstance I flatter myself we may be able to bring things to some kind of temper and settlement, which we are told they have hitherto wanted very much.[1] We have been much delighted with the appearance of the country, which we think, or at least I do, more beautiful than England itself. And the river is a noble one. We are here 360 miles from the mouth of it, reckoning of the West End of Anticosti, and it is two or three miles wide very near this place. And Every body agrees that the country between Quebec and Montreal is still finer than that we have seen. The weather

[1] The disturbed state of the province had been such that General Murray had been recalled on April 1, 1766, to give an account of his government.

is also exceedingly fine and bright here, and very warm, or even hot, tho' we are now in the middle of September. But the town is very dirty, partly through the mischief done by the siege[1], the rubbish of the ruined houses, and the want of pavement, and partly from the supineness and indolence of the French inhabitants which make them leave everything in a poor shabby condition without so much as wishing to see it otherwise. The houses are shabby awkward things, oftentimes with tiled or bricked floors, (tho' wood is so plenty,) which makes their rooms look like kitchens or dairy houses, or wash-houses, or the like offices in England. And the windows are not sashes, but clanging things like folding doors. And there is no plaister to the cielings to cover the bare timbers, so that you may fancy yourself in a cock-loft whenever you happen to look up. And they have usually only one floor, a ground-floor consisting perhaps of four, or five, or at most seven rooms of all sorts, besides shabby garrets. Mr: Hey's house, though reckoned here a good one, is of that kind. It would be a good one if it had another story. Goldfrap,[2] Mills,[3] and Cramahé[4] have, however, houses that are an

[1] The siege of 1759.

[2] James Goldfrap was the deputy of Henry Ellis, formerly governor of Georgia and of Nova Scotia (see note 3, p. 62), who had been on April 30, 1763, granted a commission as "secretary of the province, clerk of the Council, commissary or steward-general of provisions and stores, and clerk of the Inrollments". Goldfrap arrived in Canada in the beginning of October, 1764; and on October 10 he was admitted a member of the Council, by mandamus dated July 20. In January, 1766, Ellis substituted for him George Allsopp; but Murray refused to admit Allsopp to office. Goldfrap therefore continued to act as deputy secretary and registrar until April, 1768, when Carleton admitted Allsopp to office. For the correspondence relating to Ellis's deputies in Quebec, see Canadian Archives, Q 55, pp. 225-248.

[3] Thomas (afterwards Sir Thomas) Mills was receiver-general of the province. During the period of military rule, he had been first town adjutant, then town major, of Quebec. He was appointed receiver-general in July, 1765, and was admitted to the Council on June 30, 1766. In August, 1767, he obtained leave of absence to go to England; and he did not return to the province until 1787, his place being occupied in the meantime by deputies. In August, 1789, he was suspended from office by Dorchester, as the result of an investigation into his accounts.

[4] Hector Theophilus Cramahé was a member of the Council at Quebec. He was a Swiss who, like Haldimand and Bouquet, had entered the British army. He had served as a captain in the 15th Regiment at Louisbourg, and he had been deputy judge-advocate in the expedition against Quebec. From the capitulation of Quebec to the institution of civil government, he had been secretary to General

exception to this description; but it is because they have laid out a good deal of money in fitting them up in a neat and proper manner. In the lower town, which was almost entirely destroyed in the Siege, there are many houses lately built by the English merchants in the English taste with a considerable degree of neatness. By all that I can find the English and French agree together tolerably well and speak well of each other; but there are great animosities between the English themselves one with another. From what causes this proceeds, other than the mere rivalship of trade, I know not: But I have already found it to be too true by the bitter manner in which they speak of each other, as well as by all their accounts of the state of things in this place. Colonel Carleton[1] arrived at New York on the 20th of August, and is thought to be now at Montreal, and is expected here in a few days. We long much for his coming, as you may well suppose. Mr. Thomas Walker[2] has put into my hands a very

Murray. He was sworn in as a member of the Council on August 13, 1764. When Thomas Mills went to England in 1767, Cramahé was appointed acting receiver-general in his place; and when Carleton was temporarily recalled in 1771, he was appointed lieutenant-governor of Quebec. This position he retained, both under Carleton and under Haldimand, until 1782. In 1785 he was made lieutenant-governor of Detroit, but he does not appear to have entered on his duties at that place. He died in England some time between 1788, when he drew his last payment from the Treasury, and 1790, when his widow was granted a pension of £150 (Haldimand's Diary, Can. Archives Report, 1889, p. 289).

[1] Guy Carleton (1724-1808), afterwards Lord Dorchester, had been appointed lieutenant-governor of the province of Quebec, under a commission dated April 7, 1766. General Murray, although he had been recalled to England in the spring of 1766, still retained the position of governor-in-chief; and it was not until 1768 that a commission as governor-in-chief was issued to Carleton. During the interval between Murray's departure from Quebec on June 28, 1766, and Carleton's arrival on September 22, 1766, the affairs of the province had been administered by the senior member of the Council, Lieut.-Colonel P. Aemilius Irving. For Carleton's life, see A. G. Bradley, *Lord Dorchester* (The Makers of Canada), Toronto, 1910.

[2] Thomas Walker was the stormy petrel of the early days of British rule in Canada. He was born in England, possibly in 1718; emigrated to Boston, Massachusetts, in 1752; and settled in Montreal in 1763. Here he was engaged in the western trade. He was apparently a man of means, for he had not only a town house and stores in Montreal, but also a farm-house and potash works at L'Assomption. On August 24, 1764, General Murray made him a justice of the peace. This brought him into conflict with the military, and led to the assault on him in his house at Montreal on December 6, 1764, when his ear was brutally cut off. The authorities failed to bring the offenders to justice; and Walker, never very peaceful in temperament, accused them of attempting to block the course

long deposition made by a soldier of the 28th regiment, whose name is George Magovock, who was an accomplice in the vile attempt to disfigure him, before a Justice of the peace at Montreal, giving a long and particular account of that affair,[1] by which it appears that more than 30 persons of that regiment and the 44th, and among them at least four officers, were concerned in the execution of it. It is a minute detail of the whole plan of operations and the manner in which it was carried into execution. He means to proceed against some of the principal of these ruffians in the manner that shall be most adviseable. I am still of the opinion that this province is by no means ripe for an assembly, and that a parliamentary settlement is most earnestly to be wished for.[2] And this seems to me to be so obviously and indisputably expedient that I cannot help entertaining an agreeable forboding that it will come

of justice. Thereupon the Council suspended Walker from the commission of the peace on June 22, 1765. Walker took his case to London; and on March 21, 1766, a strongly worded letter was addressed to Murray by the Secretary of State instructing him to restore Walker to the magistracy, and to leave no stone unturned to discover his assailants and to bring them to trial. Walker was never restored to the magistracy; but the offer of a reward by the Crown bore fruit in the deposition, referred to above, of George McGovock, a soldier who gave evidence against a number of persons. These, he swore, had been accomplices with himself in the assault. In the ensuing trial, to which Maseres makes frequent and copious references in these letters, the prosecution failed; as did a subsequent prosecution of McGovock for perjury. To this day the identity of Walker's assailants is a mystery. In November, 1773, Walker was a prominent member of the committee of British inhabitants who petitioned for a house of assembly. The following year, when the Americans invaded the province, Walker went over to the rebel cause, though he did not actually take up arms. In October, 1775, he was seized by the British at his country house at L'Assomption; but he was later rescued by the Americans. It was at his house in Montreal, in the spring of 1776, that the American commissioners, Benjamin Franklin, Samuel Chase, and Carroll of Carrollton, lodged; and it was with them that he left the province, when the Americans retired. In 1785 Pierre Du Calvet met him in London; but after that he passes from view.

[1] This deposition, dated July 11, 1766, is in the Canadian Archives, Q 55, pp. 211-215.

[2] In the pamphlet entitled *Considerations on the Expediency of procuring an Act of Parliament for the Settlement of the Province of Quebec*, which Maseres had published at the instance of Carleton and Hey before leaving England, he had expressed the opinion that the calling of a house of assembly was "a measure which probably will not for some years to come be found expedient"; and he had strongly urged the passing of an act of parliament to deal with the three problems of religion, law, and finance.

to pass. I am persuaded many of the merchants here would approve of it. I have received great civilities from Dr. Brooke[1] and Mr: Alsop,[2] for which I am extremely obliged to them. The doctor is a very sensible agreeable companion, and seems to have a very hearty and friendly disposition; and Mrs: Brooke[3] is a very sensible agreeable woman, of a very improved understanding and without any pedantry or affectation. Mr: Thomas Walker desires me to present his compliments to you,[4] and to acquaint you that he will write to you very soon, having at present his hands full of some mercantile affairs. He will go to Montreal in about a week. Mr: Hey also presents his compliments to you with thanks for your letter which he has just received. Captain Davises

[1] The Rev. John Brooke was garrison chaplain at Quebec from *circa* 1760 to 1768, and deputy of the Hon. Robert Cholmondeley as surveyor and auditor-general of the king's revenues from 1764 to 1768. He had been a thorn in the side of Murray. In October, 1764, Murray had complained that, although Brooke was the only Protestant clergyman in the province, he could not speak French; and writing to Cholmondeley, Murray expressed regret that their friend Brooke did not "keep better company". In July, 1765, Murray mentioned Brooke as a member of "the Cabal" which was agitating for his recall (Murray's Letter Book, Canadian Archives, M 898 B). It is probable that Maseres imbibed from Brooke much of the animus towards Murray that appears in these letters. Brooke died in 1788.

[2] George Allsopp was a merchant of Quebec. He settled there in 1761, and became an outstanding exponent of the rights of the British merchants, especially as opposed to the military (see pp. 79-81). In January, 1766, he obtained the appointment of deputy secretary, registrar, and clerk of the Council from the patentee, Henry Ellis; but Murray, to whom Allsopp was obnoxious, refused to admit him to office. In April, 1768, however, as the result of an inquiry conducted by a board of which Maseres was a member (see p. 78), Allsopp was admitted to office by Carleton. He continued as deputy secretary until 1775, when he was replaced by George Pownall. From 1771 to 1776 he was deputy commissary-general. After the passage of the Quebec Act, he became a member of the Legislative Council established by that act; and in the Council he was active in opposition to both Carleton and Haldimand. In 1783 Haldimand dismissed him from the Council, and he retired from political life; although in 1787 he was appointed a member of a committee of the merchants of Quebec to report on commercial affairs.

[3] Frances Brooke (*née* Moore) was an English novelist. While in Canada she wrote *The History of Emily Montague*, 4 vols., London, 1769, a story which gives an interesting picture of life in Canada in the early days of British rule, and which may properly be described as the first Canadian novel. She died on January 23, 1789.

[4] Were Thomas Walker and Fowler Walker by any chance kinsmen? If they were, the fact might serve to throw light on the appointment of Fowler Walker as agent of the British merchants in Canada. What little evidence there is, however, seems to point in the opposite direction.

ship, the London, arrived here last Friday se'ennight, so that he has been nearly as long in his passage as ourselves. Cramahé[1] came in it. I desire my compliments to Mr: Walpole[2] and to Mr: John Ley of the bar, deputy recorder of Exeter, and to Mr: Dunning[3] and Mr: Mansfield,[4] if you know them and happen to see them; and remain your most obedient and

most humble servant,

F: Maseres.

To Fowler Walker, Esq^r.

Quebec, July 17, 1767.

Dear Sir,

I take the opportunity of Mr: Knipe's[5] going to England to send you these few lines. It is now at last within about a

[1] At the end of October, 1764, Murray had sent Cramahé to London as agent for the French inhabitants, and as his own confidential agent, to lay before the British ministry the requirements of the province. Now, after nearly two years in London, he was returning to Quebec.

[2] It is improbable that Horace Walpole (1717-1797) is meant, since there is no evidence in Walpole's *Letters* that he even knew Maseres.

[3] John Dunning, afterwards first Baron Ashburton (1731-1783), was a rising English barrister. He had been admitted a student of the Middle Temple in 1752; had been called to the bar in 1756; and had joined the western circuit, where he must have met Maseres. He gained a reputation as defending counsel in the Wilkes case; and in January, 1768, he became solicitor-general in the Grafton administration. He took a prominent part in attacking the Quebec Act in the debates in the House of Commons. In 1782 he was raised to the peerage as Baron Ashburton of Ashburton.

[4] James (afterwards Sir James) Mansfield (1733-1821) had been a contemporary of Maseres at Cambridge. He had become a fellow of King's College, Cambridge, in 1754. In November, 1758, he had been called to the bar at the Middle Temple. He was one of Wilkes's counsel after Wilkes returned to England in 1768; and as counsel for the merchants of the City of London, he spoke against the Quebec Act before the House of Commons on May 31, 1774 (see Cavendish, *Debates*, pp. 96-99). He afterwards became lord chief justice of the court of common pleas.

[5] Francis Knipe was a merchant of Montreal, and a friend of Thomas Walker. On August 24, 1764, he was made a justice of the peace by Murray, at the same time as Walker; and it was over the billeting of an officer on the house where he lodged that he and Walker came into conflict with the military. When the officer refused to vacate his rooms, Walker ordered his arrest; and this incident was without doubt one of the causes of the assault on Walker shortly afterwards. On March 14, 1765, Knipe was one of the witnesses to the "public instrument" in which Walker protested against the lethargy of the authorities in bringing his assailants to justice. In July, 1767, Knipe went to England to prosecute an appeal against Lieut.-Colonel Gabriel Christie, deputy quartermaster-general at Montreal. There is no evidence that he ever returned.

fortnight confessed by Murray's[1] friends, and even by himself in some of his letters, that he is not to come back to this country,[2] though till lately he had caused it to be given out in the most positive manner that he was certainly to come out this spring. These hopes and fears, (hopes in a few people attached to his interest, and fears in the rest of the province French as well as English) have kept the province in a perpetual ferment ever since we have been here. We are all much obliged to you for your diligent and steady prosecution of the complaints[3] sent up against him, notwithstanding the want of union and vigour in the complainants. We doubt not that your diligence has been a considerable cause of their having succeeded; for so I consider their having had sufficient weight to hinder his return thither, that being the main object of the complainants. As to his ridiculous and shameless acquittal, or rather discharge,[4] by the privy

[1] James Murray (1719-1794) had been governor-in-chief of the province of Quebec since the institution of civil government, and nominally still occupied that position. It was not until 1768 that Carleton replaced him as governor-in-chief. He was the fifth son of Alexander, fourth Lord Elibank. He had entered the army as a second lieutenant in the Marines, at the age of twenty-one; and had risen gradually to the rank of major-general. He had seen service in the West Indies, in Flanders, in Brittany, at Louisbourg, and in Quebec. From 1759 to 1763, during the period of military rule, he had been military governor of the district of Quebec; and so successful was his régime that, on the establishment of civil government, he had been made governor-in-chief of the whole province. His path as civil governor, however, did not prove smooth; and in 1766 he was recalled to give an account of his administration, and to meet the charges made against him by the malcontents in the province. The Privy Council, by order-in-council dated April 13, 1767, dismissed the charges; but, in spite of this acquittal, he did not return to Quebec. In 1772 he was promoted to be lieutenant-general; and in 1774 he was appointed governor of Minorca, which he defended, gallantly but unsuccessfully, against a combined French and Spanish attack in 1781. He died in 1794. His letters and papers have recently been acquired by the Canadian Archives (see Canadian Archives Report, 1912, Appendix I). In them he appears as a hot-headed and outspoken soldier, but hardly as the "madman of parts" described in Maseres' letters.

[2] As early as March 15, 1767, one of Murray's friends in the colony wrote to him congratulating him on his decision not to return to "the frozen Region of Canada" (Canadian Archives, M 898 D).

[3] These complaints were embodied in petitions from Quebec merchants and the London merchants, which are printed in the Canadian Archives Report for 1888, pp. 14-17. When the complaints were being investigated, Fowler Walker attended the Privy Council, as agent of the petitioners.

[4] The order-in-council of April 13, 1767, dismissed the charges against Murray as "groundless, scandalous, and derogatory to the honour of the said Governor" (Canadian Archives, C.O. 42, vol. 6, p. 337).

council, it does him no honour, but very great dishonour to those who discharged him. We have heard of his foolish endeavours after that to clear himself before the merchants, by which he drew upon himself a confirmation of the complaints against him from the mouths of some persons he had injured. It is by no means true that he was a favourite of the Canadians: they think him a very improper man for governor, and are very sensible of the happy exchange of him for General Carleton, who gives general satisfaction. He had, properly speaking, no friends in the province; that is, none who were so from esteem and sentiment. Those who were zealous for him are persons whom he has raised and given offices to, and who partly out of gratitude (though that don't go a great way with them) and partly, and that principally, from an opinion that their future power and dignity depends upon his continuing to be governor, wish his return for the sake of their own advantage. As to the Canadians, they have no reason to be obliged to him, since by his great ordinance for erecting the courts of Judicature, 17 Sept. 1764,[1] he has at one stroke introduced all the laws of England then in being, unknown as they were to himself as well as to the poor Canadians, and, wantonly and without the least necessity or utility, thereby abolished all the ancient laws and customs, which they knew and loved. This creates a great uncertainty and confusion in the state of the law in this country, which when and how it will be cured I know not. General Carleton has not yet received the least advice or direction from England, though he hopes for such every day by the May packet. This is very strange, and shews great supineness in the ministry about the concerns of the province. After the trial about the rum-duties last year there were full accounts of it sent home to the ministry;[2] which I was in

[1] Adam Shortt and A. G. Doughty (eds.), *Documents relating to the Constitutional History of Canada, 1759-1791*, Ottawa, 1907, pp. 149-152.

[2] These documents are not to be found in their place in the State papers; but an account of the trial for the rum-duties is included in Maseres' *A Collection of Several Commissions*. The trial was important, as it revealed the existence in Canada of a hostility toward the arbitrary taxation of the colonies by Great Britain no less profound than that which was developing in the thirteen colonies

hopes would have produced a tax by act of parliament to remove all pretence of doubt about it, either upon rum or brandy or some other article. But we have had no directions about it. You will probably have heard a great many lies spread by Mr: Murray and his friends for the taking up six gentlemen[1] in this province for being concerned in Mr: Walker's affair. The Judge has sent a full and exact account of this whole matter to Serjeant Leigh, to be by him communicated to the Judges and ministry, as we hear it has been. Of this I imagine you may get a sight; so will only say that the conduct of the Judge and the Lieutenant-governour has been perfectly right in every step of it. The Judge thought, upon very strong grounds, that he ought not to bail them; and the Lieutenant-governour, though he wished they might be bailed, yet would not interpose his authority to cause them to be bailed in opposition to the Judge's opinion, though petitioned to do so by a great number of people both French and English, and, amongst the latter, by Mr: Alsop.[2] This is the short story of that matter, which has been made the subject of much clamour. You have intimated a desire of being appointed agent for this province by the governour

to the south. In March, 1766, orders had been issued by the British Treasury to the receiver-general at Quebec to levy a specified scale of duties on imported rum, brandy, wines, etc. (see D. McArthur, "History of Public Finance", *Canada and its Provinces*, vol. 4, p. 494). This scale of duties was put into effect by a proclamation published in July, 1766; but a number of the Quebec merchants refused to pay the duties. The case was brought into the courts, as appears from Maseres' accounts for fees, in October, 1766, when Maseres moved the court "for a rule to oblige the defendants in the five informations filed for the king's duties upon rum and brandy to appear and plead to them". A test case was made of the action against one of these merchants named Dupré; but, owing to the attitude of the jury, a conviction was not secured.

[1] Captain Daniel Disney, 44th Regiment, town major of Montreal; Captain John Fraser, 27th Regiment, deputy paymaster-general, and one of the judges of the court of common pleas: Captain John Campbell, 44th Regiment; St. Luc de la Corne, formerly a captain in the French service, and a Chevalier de St. Louis; Lieutenant Simon Evans, 28th Regiment; and Joseph Howard, a merchant of Montreal. It is remarkable that in the rare pamphlet entitled *Trial of Daniel Disney*, published, apparently from notes furnished by Maseres, in Quebec, 1767, the name of "Colonel Christie, Deputy Quartermaster-General" is substituted for that of Evans; but this is undoubtedly an error. Many of the documents relating to this incident are printed in the Canadian Archives Report, 1888, Note A, pp. 1-14.

[2] Canadian Archives Report, 1888, Note A, pp. 6-8.

and council. What kind of office this would be I hardly know. It would be considerable different from that of agent for the merchants of Quebec, or Sollicitor of their concerns with the government at home. You would in that case become representer of the sentiments of the Governour and Council only. I do not think this can, or will, be done. But as to your present employment of agent for many of his majesty's subjects residing in this province, I have the pleasure to be able to assure you that you are thought very fit for it both in point of ability, diligence, and fidelity by the generality of people here, the Canadians as well as the English, and whenever an opportunity has offered, I have made use of it to bear witness to your character in this respect. One Mr: Cugnet[1] was complaining to me the other day that the affair of the posts at Mingan, in which he is concerned, had been taken out of your hands unknown to him, despairing of their being so well managed as they would have been by you. He says this has been done by Mr: Taché,[2] another of the persons concerned in them, through an ill-judged desire of saving a little expense upon the earnest sollicitations and promises of General Murray, who has declared he will undertake the affair and sollicit it himself at the proper boards till the desires of the petitioners are granted; in which Mr: Cugnet doubts the general will not exert himself with the same

[1] François Joseph Cugnet was the husband of Marie-Joseph de La Fontaine de Belcour, one of the usufructuaries of the Baroness de Castelnau, heiress of the explorer Louis Jolliet, by whom part of the Mingan seigniories had been acquired in 1683 (*Actes de Foy et Hommage*, vol. 4, p. 104). The seigniories of the mainland, isles, and islets of Mingan and Anticosti were the subject of litigation from the time of Jolliet's death until the disputes were finally settled in 1892 by the judgment of the Judicial Committee of the Privy Council in the case of *The Labrador Company* v. *the Queen*. Cugnet was destined to become later a controversial adversary of Maseres (see Maseres' *Mémoire à la Défence d'un Plan d'Acte de Parlement . . . contre les objections de M. François Joseph Cugnet*, London, 1773). Cugnet held, during Carleton's régime, the post of secretary to the Governor and Council for the French language; and he was employed by Carleton in 1786 to draw up a digest of the old French laws in Canada. This digest he published at Quebec in 1775 under the title *Traité Abrégé des ancienes Loix, Coutumes et usages de la Colonie de Canada*. Other publications of his were *Traité de la Loi des Fiefs*, Quebec, 1775; *Extraits des Edits, Declarations, Ordonnances, et Reglemens*, Quebec, 1775; and *Traité de la Police*, Quebec, 1775.

[2] Jean Taché was the husband of Anne, granddaughter of Louis Jolliet, and one of the co-heirs of the Mingan seigniories.

diligence and success that you would have done. I mention this to show you the reputation you have on this account with some of the Canadian inhabitants. The memorial you have seen upon that subject of the seigniories of Mingan and Anticosti was drawn up by your humble servant, not without a good deal of time and pains.[1] I am in as good business as the place affords, acting only as a barrister. My brethren act both as barristers and attornies, by which they double or treble the profits they would make as barristers only. My profits by my private business, independently of my office, amount, from the time of my arrival here, on the 5th of September last year, to the present day, to about £230 sterling of money actually received, besides 10 or 12 or perhaps 20 pounds, of money not yet paid me, and which I therefore do not reckon, as I think nothing sure, especially in this province, until it is done. And I am persuaded the business of this place will decline considerably every year, from the poverty of the province and the declining state of trade, so that, if I shall stay in this province, I reckon my future profits arising from private business as amounting to at most £200 sterling a year. The office of Attorney-general, if all my charges are allowed (which I doubt of in this age, in which severe maxims of economy are practised upon useful officers of government at a distance, at the same time that lucrative sinecures and pensions are profusely bestowed upon people of interest at home) will be worth between 4 and 5 hundred pounds per annum, and, I believe, at all events may be reckoned worth £300 per annum, that is, £150 in Salary and £150 in fees.[2] Lower than that I think they can hardly reduce it. You will judge by this account that little Cunningham[3] told a great lie when he informed you that he had got

[1] This document, together with many others relating to the dispute over the Mingan seigniories, is to be found in the Canadian Archives, C.O. No. 42, vol. 6.

[2] See Maseres to Sheridan, Appendix D.

[3] William Conyngham had been clerk of the peace for the district of Quebec and coroner for Quebec, under commissions dated September 1, 1764. On January 22, 1765, he had been replaced as clerk of the peace, and on April 19, 1765, as coroner. Murray, writing to the Lords of Trade about him on July 15,

£2000 the last year of his residence in this province, which is proved likewise by his dying in debt, notwithstanding his great pretended profits, though he never lived at a very great expence. He was a man of a very indifferent character. Nobody regrets his loss, or speaks well of him. I suppose you know that the report of Mr: Yorke and Mr: De Gray to the council upon the administration of Justice in this province,[1] though it was approved by the committee of council, yet was not confirmed by the council. One reason of this seemed to be that the ministry were unwilling to be at the expence of three Judges in the province instead of one, which those gentlemen had advised. I am now of opinion that it was an imprudent measure to let the Canadians have a bishop.[2] They had themselves given over the hopes of it, and were very well disposed to be satisfied without it by giving the priests that remained in the country liberty to continue there and to perform the mass and the Sacraments unmolested. Nay, I have hear'd some Canadian gentlemen, professed Catholicks, blame the measure as very strange, unaccountable and unpolitick, and tending to perpetuate the Popish religion, which would otherwise have declined very fast (provided protestant French ministers had been sent here in sufficient numbers) and thereby to keep up

1765, complained of "the iniquitous conduct of that Practitioner of the Law" (Canadian Archives, C.O. No. 42, vol. 3, p. 2). On losing his official appointments, Conyngham obtained on March 23, 1765, a commission entitling him to practise as an attorney-at-law; but on May 21, 1765, he was "dismissed from acting as an attorney or advocate, in any of the Courts of Justice throughout this Province", by resolution of the Council, on account of his having taken down, as notary public, Thomas Walker's protest of March 14, 1765. Shortly after this, Conyngham left for England; and he appears to have died there some time in 1766.

[1] "Report of Attorney and Solicitor-General regarding the Civil Government of Quebec", Canadian Archives, M 383, p. 170; printed in Shortt and Doughty (eds.), *Documents relating to the Constitutional History of Canada, 1763-1791*, pp. 174-178.

[2] The British government had in 1765 given an informal and conditional consent to the appointment of a Roman Catholic bishop in Quebec; and in June, 1766, Monseigneur Jean Olivier Briand, vicar-general of Quebec, had been consecrated as bishop at Suresnes near Paris (see H. A. Scott, "The Roman Catholic Church east of the Great Lakes, 1760-1912", *Canada and its Provinces*, vol. 11, pp. 15-18).

an important difference in the sentiments, and consequently in the affections of the old and new subjects of the province. The reasons Cramahé gave for allowing a bishop I believe now to have been only specious and sophistical, though at first they imposed upon me as well as others. He seems to me to be a well-wisher to the Popish religion, and not to desire that any steps should be taken, however mild and moderate, for introducing the protestant religion. I incline to think that if, during the seven years that we have possessed this country, vigorous measures had been taken to patronise and introduce the protestant religion, though without the least persecution of the Popish, half the country would already have turned protestants. I remember Cramahé, when he was in England solliciting the appointment of a bishop, said that he was not to appear publickly as a bishop, nor to be called so, but to be called *Le surintendant*, or *Le grand vicaire*. But the bishop does in fact wear his purple robes and Golden cross in public, and is called *Monseigneur L'Eveque* by all the Canadians both priests and Laymen, and walked under a canopy supported by four of the principal inhabitants of this town with the host in a grand procession on Corpus Christi day, one of the greatest holydays. I saw him. Now I don't blame all this in itself; but I blame it, if the bishop promised other things in England, as I conjecture from Cramahé's then conversation that he did: and if he did promise otherwise, I cannot help blaming Cramahé for talking in that style and deluding people into an opinion that he was not to be called bishop or to appear with all this public pomp. We have done the reverse of what we should have done with respect to the Canadians in taking away their laws which did us no harm and the continuance of which was necessary to their happiness, and we have left their religion in all its splendor, though the principles of it have a natural tendency to keep up a perpetual disaffection to our government. 'Tis difficult to be well-affected to a set of governours whom they look upon as enemies of God, deserving of, and destined to, eternal damnation. Whenever you have an hour of leisure

a letter from you will much oblige your most obedient and humble servant

Francis Maseres.

To Fowler Walker, Esq^r.

Quebec, Nov: 19, 1767.

Dear Sir,

I am much obliged to you for your favour of the 15th of June, which I received above a month ago. I confess the passage you cite from the Duke of Grafton's[1] speech gave me a great deal of pleasure. I have shown this letter to the Judge and the General. 'Tis strange and very ill treatment of the latter not to have sent him his commission of Governor in Chief, and very pernicious to the province, as it tends to keep up the ferment of Murray's party. Murray's acquittal I consider as a conviction in the eyes of all men of impartiality and common sense. I was glad to hear from some persons lately arrived from England that he is much sunk in his credit and influence and is discovered and generally understood to be what he really is, a madman of parts but of the mischievous kind; for such was the expression I hear'd lately used concerning him as the language spoken of him in London in last September. I don't understand the passage you quote from Lord Temple's[2] speech in the house of Lords: I can't find out who the quondam minister was who had taken a step toward regulating this province, nor what that step was.[3]

[1] Augustus Henry Fitzroy, third Duke of Grafton (1735-1811), had taken charge of the Treasury in the administration formed by Chatham in July, 1766; but in September, 1767, owing to the continued illness of Chatham, he became virtual head of the administration, which was henceforth known by his name. It is not possible to determine what the speech above referred to was, as the debates in parliament were not published at this time.

[2] Richard Grenville, Earl Temple (1711-1779), was the brother-in-law of William Pitt, Earl of Chatham, and had been Lord Privy Seal in the Newcastle-Pitt administration from 1757 to 1761. He had later, however, become estranged from his brother-in-law, and in 1767 he was in opposition.

[3] The "quondam minister" would appear to have been Charles Yorke, who as attorney-general had prepared in 1766 a report on the government of the province of Quebec (see note 1, p. 53). A reference similar to that which Temple appears to have made is to be found in a letter from Northington to Grafton, dated August 9, 1767, regarding "the affairs of the Canada Legislation": "I am of opinion that, before a plan can be formed, which must necessarily have

However, I hope from all this speech-making that the parliament will take us in hand. As the government here has failed in their endeavour to recover the rum-duties by Law, it is absolutely necessary the parliament should interpose to lay either these or other duties, or increase the confusion of the province an hundred-fold by creating an house of Assembly, or else that the British treasury should continue to pay the expence of the civil government here. I should be glad to know what the ministry said or did upon their receiving last Christmas a full account of the trial for the rum-duties. I exerted myself as well as I could in the service of the crown, declaring at the same time that the crown did not on that occasion mean to exercise a power of laying taxes upon the inhabitants of this province, but only to demand a tax already legally established by the former government under the French king, and now transferred by right of conquest from the French king to the King of Great Britain; and as the fact of the existence of such duties was clearly proved, I exhorted them to find a special verdict that the point of Law might be determined by those who were the proper Judges of it, the chief justice of the province here, and the king in his privy council at home, and I represented it as their duty so to do; by which many of the pretended patriots of this place were much offended. But it is my sincere opinion that Juries are bound in conscience to separate points of law from points of fact whenever they happen to be blended together in general issues, and to determine only the latter leaving the former to the court, and for that purpose to find special verdicts in such cases, and more especially when the Judge exhorts them to do so, as was the case in that trial.[1] I look upon the sending a bishop here as a most pernicious measure, by which Cramahé has done the

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the sanction of parliament, it is necessary to have the full sense of the King's servants upon that subject, that the measures may have the general support of Government; and not be thrown, as they were last year upon one person, not in the least responsible for them" (Sir W. Anson, *Autobiography and Political Correspondence of Augustus Henry, Third Duke of Grafton*, London, 1898, p. 171).

[1] See note 2, p. 49.

province more harm (though with a good intention) than ever he did it service by his disinterested conduct as governor's secretary in the time of the military government. It is giving the Catholics a hand that keeps them all united together, and hinders such as would chuse to turn protestants from daring to do so. All these matters will, I hope, be well explained by Mr. Vezssiere,[1] a Recollet monk who embraced the protestant religion about a year ago, and to whom Dr: Brook[2] has refused to administer the form of Abjuration sent over last spring by the Bishop of London for abjuring converted priests, since which refusal the Doctor and I have had nothing to say to each other; for I consider it as a low and foolish piece of flattery to General Carleton who was (from the fear of some political ill consequences such as tumults, angry controversies or the like) unwilling that this convert should officiate here as a protestant minister. I believe the General's fears to be very idle and chimerical; but he has them, and that is his reason for acting as he has done; but Dr: has them not; for, till he found the general's great and fixt aversion to it, he used to wish and intend that this convert should officiate; so that he gave up his own opinion and the interests of the protestant religion on that occasion. I am sorry to see so total a neglect of all measures that might introduce the protestant religion; and am fully of opinion that the right way of settling this province would be to take away their religion (that is, to discourage it without persecution,

[1] Veyssière had been recommended by the Bishop of London for an appointment to a living in Canada; and a mandamus had been sent to Carleton to admit him to the church and parish of Three Rivers. Carleton, writing to Hillsborough on July 21, 1768, reported that, since he had a mean opinion of Veyssière, he had issued to him a commission conferring only limited powers (Canadian Archives, Q 5-2, p. 726). Veyssière's return to England may have been in connection with the obstacles placed in his way by Carleton. Later he returned to Canada, and entered on his charge at Three Rivers; but his career as rector at that place merely served to substantiate the soundness of Carleton's opinion concerning him. In 1790 he was described as "a most dissolute character", who "never does any duty at all" (Canadian Archives, Q 49, p. 343). In 1794 the Bishop of Quebec reported adversely upon him (Canadian Archives, Q 69-2, p. 285), and sent his brother, the Rev. Jehoshaphat Mountain, to Three Rivers as assistant. By 1800 Veyssière had been superannuated, but still retained his salary (Canadian Archives, Q 85, p. 53).

[2] See note 1, p. 46.

and powerfully encourage the protestant religion) and leave them their laws, whereas the plan hitherto pursued has been to take away their innocent, useful, compendious laws, which were well understood by the people and suited to their wants and situation, and introduce in their stead the voluminous, intricate, unknown laws of England, with courts of justice that sit three or four times a year instead of such as sat twice in every week, and to leave them in full possession of this dangerous, [*illegible*] and treacherous religion. I think Mr. Yorke's plan for the Administration of Justice[1] a very excellent one, considering it was made in London by a man unacquainted with the people. But something more in their old stile would be much more agreeable to the Canadians. A plan of this kind[2] is now drawing up by your humble servant together with a view of the civil government and administration of Justice in this province in the time of the French government, by the direction of the Lieutenant-governor in consequence of orders received from England, and will soon be transmitted to the Ministry. You will probably see them. [We have had but a turbulent time of it as yet, from the ferment raised by Murray's party; the hopes they gave out that he would return, which were not intirely dissipated till last July; the prosecution of the prisoners at Montreal for the assault upon Mr: Walker;[3] the subsequent action of Major Disney against Walker for a

[1] See note 1, p. 53.

[2] The reference is to the "Draught of An Intended Report of the Honourable the Governor in Chief and the Council of the Province of Quebec to the King's most Excellent Majesty in his Privy Council; concerning The State of the Laws and the Administration of Justice in that Province", published by Maseres in his *Collection of Several Commissions*, London, 1772.

[3] A vast mass of documents relating to this trial are to be found in the State Papers, the Murray Papers, the Dartmouth Papers, and the Haldimand Collection in the Canadian Archives. A few of the more important, including Chief Justice Hey's account of the trial, are printed in the Canadian Archives Report, 1888, Note A, pp. 1-14. An account of the trial was published in Quebec in 1767 by Brown and Gilmour, printers, entitled *Trial of Daniel Disney, Esq.;* it appears to have been compiled from notes supplied by Maseres, since it contains Maseres' addresses to the jury, but neither the address of counsel for the defence, nor the summing up of the evidence by the Chief Justice.

malicious prosecution,[1] which was tried last September and decided in Walker's favour; the trial of the cause for the rum-duties;[2] the clamour above-mentioned about my saying it was the duty of honest Jurymen to find special verdicts when advised to do so by the Judge; the clamours begun at different times for obtaining an house of Assembly,[3] which seem now to be quite dropt; the trial of the officers of the 52^{d} for whipping a soldier to death,[4] (which, to their shame be it spoken, they did do, giving the poor man 175 strokes with such severity and with so much deliberation and slowness that the punishment was 40 minutes in the inflicting and was the sole cause of the man's death three days after;) and at this very time the opposition made by a great number of the merchants to the introducing the use of the bankrupt laws into this province,[5] and of commissions of bankruptcy founded on them, which seem to me to be as much introduced into this province as any other parts of the law of England that were in force upon the institution of civil government in this province. These laws seem to me to be very wise and beneficial as well as to be in force; but numbers of people have objected to the execution of them for reasons that I know not, and which I incline to think they do not know themselves. But upon the whole the dissensions of the province are subsiding and the times growing calmer. I have hear'd today that the affair of the trading-posts at Tadoussac and Chicotimi has been determined in favour of Mr: Dun and Mr: Gray, the king's lessees, by his majesty

[1] There is in the State Papers no reference to this action. On March 15, 1767, the Grand Jury at Montreal brought in a true bill against Walker for perjury; but the Chief Justice expressed the hope on April 14 that he would succeed in putting a stop to this action (Canadian Archives, Q 4, p. 133). Disney's action was apparently an independent matter.

[2] See note 2, p. 49.

[3] See, for instance, the petition of the Quebec traders, printed in Shortt and Doughty (eds.), *Documents relating to the Constitutional History of Canada, 1763-1791*, pp. 168-169.

[4] In Maseres' accounts for fees, under the month of October, 1766, there appears a reference to an "indictment against Adjutant Spleen and others of the 52nd Regiment for the murder of Donald Mackenzie by a cruel whipping"; this is apparently the trial referred to.

[5] See p. 72.

in council;[1] which gives me great pleasure, partly because I know and have a friendship for Mr: Dun,[2] but more because I think this decision a piece of Justice due to him, thinking his lease a valid one and not yet revoked by the king, though the king may, by virtue of a particular clause [in] it, revoke it whenever he pleases, giving the lessees a twelvemonths notice. I further believe that the best way of carrying on this trade is by letting these posts to particular persons of substance and discretion, who will take care not to give the Indians such a profusion of rum and brandy as to make them drunk and lazy and unfit for hunting, and oftentimes to kill them, all which has been and would be, as I am informed, the consequence of laying this trade open. Besides the crown receives rent from the lessees of £400 Hal. Cur., or £360 sterling a year, which in the present low state of the revenue is not to be despised. But your friend Mr: Alsop[3] will not be pleased at this. Mr: Welles,[4] that used to live in Montreal, (a great and faithful friend of Mr: Walker,) is lately become Mr: Alsop's partner, which looks as if Mr: Alsop had given up his design of being Secretary of the

[1] In 1764 a monopoly of the Indian trade at the King's posts, of which Tadoussac and Chicoutimi were the chief, had been granted to Thomas Dunn and John Gray. Other merchants, notably Joseph Howard in Canada and Anthony Merry in England, taking the view that the Proclamation of 1763 threw the Indian trade open to all, attempted to break in on this monopoly. The case was carried to the Privy Council; and on June 26, 1767, Dunn and Gray were confirmed in their monopoly by order-in-council. The King's posts, whether administered by royal agents, or farmed out to lessees, had been one of the sources of the Crown's revenue since far back in the French period.

[2] Thomas Dunn (1731-1818) was a merchant who had come to Quebec during the period of military rule. From the establishment of civil government to the passage of the Quebec Act, he was a member of the Executive Council of the province; and from the passage of the Quebec Act until the passage of the Constitutional Act of 1791, he was a member of the Legislative Council. After 1791 he became a member of both the Executive and Legislative Councils of Lower Canada. During five different periods he was president of the Legislative Council; and twice he acted as administrator of the province, first during the interval between the departure of Sir Robert Milnes in 1805 and the arrival of Sir James Craig in 1807, and second in 1811 between the departure of Sir James Craig and the arrival of Sir James Prevost.

[3] See note 2, p. 46.

[4] John Welles had been one of the witnesses to Thomas Walker's protest of March 14, 1765. In 1773 he appears as a member of the Quebec committee petitioning for a house of assembly (Canadian Archives, Q 10, p. 26).

province.[1] Pray what has been done about the fishing-posts of Mingan and Mecatina and Saint Modet on the north side of the Gulf of Saint Lawrence, upon the memorial sent over last year to the board of trade and other ministers on the behalf of the proprietors of these posts?[2] It will be both just and beneficial to the province that their claims should be allowed. The proprietors here are sorry that the affair was taken out of your hands, having a very good opinion of your abilities and diligence, in which I have taken occasion to confirm them. Mr: Murray's fine glozing promises to Mr: Houdin[3] were the occasion of his indiscreetly taking the papers out of your hands to put them into Murray's, who undertakes to sollicit the cause. I hope Mr: Knipe[4] is likely to succeed in his appeal against Col: Christie.[5] I have hear'd so good an account of Lord Hilsborough's[6] abilities and industry that I shall be extremely glad to hear that America is allotted to his management. I hope he will cause something to be done in favour of the protestant religion, such as the taking into the king's hands the revenues of the convents, and some other things that are very obviously

[1] Allsopp was admitted to office as deputy secretary of the province in April, 1768, as the result of a board of inquiry of which Maseres was a member (see pp. 78-81).

[2] The reference is to the claims of Cugnet and Taché (see note 1, p. 51).

[3] The Rev. Michael Houdin was acting as the agent of Cugnet and Taché in London. He had been at one time a Roman Catholic priest and Superior of the Récollet convent in Canada, but in 1747 he had been received into the ministry of the Church of England. He had been appointed to the chaplaincy of the 48th Regiment in 1757, and had been with his regiment at the siege of Quebec in 1759.

[4] See note 5, p. 47.

[5] Gabriel Christie (1722-1799) was lieutenant-colonel of the 44th Regiment of Foot, and deputy quartermaster-general at Montreal. He had been a brevet-major under Amherst in 1759. Murray mentions him in one of his letters as a member of the "Cabal" which was in 1765 intriguing for Murray's recall (Canadian Archives, M 898 B). Christie settled in Canada, and acquired considerable interests in the province, including two seigniories. He rose in the army to the rank of lieutenant-general; and in 1798, the year before his death, he was acting commander-in-chief of the forces in Canada.

[6] Wills Hill, second Viscount Hillsborough, and afterwards first Marquis of Downshire (1718-1793), had been President of the Board of Trade and Foreign Plantations, which, under the Secretary of State for the Southern Department, had oversight of America, from September, 1763, to July, 1765, and from August to December, 1766. In January, 1768, he was appointed Secretary of State for America, a new post created because of the great increase of business arising in connection with the colonies. It is this appointment that is here foreshadowed.

proper to be done. You must know better than I can tell you that the trade of this province is in a most declining condition. The only thing that has a probable appearance of success is the undertaking of the ironworks near Three Rivers,[1] which is carried on by nine Joint-lessees, who have taken a lease of them from the crown for fifteen years, and are, as I am told, to clear about £100 or £120 sterling apiece, by them, after all their expences paid; which they well deserve, as it is an undertaking of some risque and a considerable expence in the setting out, to put the buildings in repair. If the Claims of the fishing-posts at Mingan, &c, are allowed, the seal fishery will probably be carried on with success, which is reckoned one of the best branches of trade belonging to the province. But in order to do this, it would be necessary to extend the bounds of this province north-eastwards as far as the straights of Belle isle, so as to take in all those places.[2] For the seal fishery can never be carried on with success but by the Canadians who are used to it and understand it, and consequently under the direction of the French or Canadian merchants residing in Quebec. It ought therefore to be subject to the law-Jurisdictions of the province of Quebec. This fishery is carried on in the middle of winter, in which it differs from the codfishery, and, I believe, from the whale fishery. The boundaries of this province are reckoned to be drawn in a very injudicious manner, saving the wisdom of Governor Ellis,[3] who drew that unfortunate

[1] The iron forges at St. Maurice, near Three Rivers, had been an important industry during the French period. The ore used was a very pure oxide of iron deposited from the waters of the St. Maurice. When smelted with charcoal, it produced a fine quality of iron, suitable for the manufacture of wrought-iron implements, or for conversion into steel. After the conquest the forges were continued in operation by the British authorities until 1765, when they were closed. In June, 1767, however, Carleton granted a lease of the mines and forges with the accompanying buildings to C. Pelissier and others. This is the lease referred to here. The substance of a report by Maseres on the forges will be found in his *Collection of Several Commissions*, London, 1772.

[2] This was effected by the Quebec Act of 1774.

[3] Henry Ellis (1721-1806) had been governor of Georgia from 1758 to 1760, and of Nova Scotia from 1761 to 1763. In Georgia his administration had been very successful; but he did not enter on the duties of his office in Nova Scotia, the government being carried on by a lieutenant-governor. In 1746-7 he had made a voyage of exploration to Hudson Bay, of which he published an account, *A*

proclamation. It is said that the Sloops from Boston loaded with rum and other spirits have carried away from this province, for it is in silver and gold, no less than £10,000 sterling gold and silver coin in Exchange for these liquors, which is a great detriment to the province. This might easily be prevented, if the British parliament would lay a tax of 9 pence or a shilling a gallon upon all spirituous liquors imported here from the other provinces of North America, and only 3 pence or 4 pence a gallon upon that imported from Great Britain or the West India Islands.[1] The West India islands might take our timber, pipestems, and corn in exchange, whereas the North-American colonies take nothing but ready money. The fur trade in the upper country beyond Montreal, towards Michilimakina and Detroit and the far lakes, is in a most lamentable decay. The persons sent thither with goods make small or no returns to their employees the Montreal and Quebec Merchants; insomuch that they are said to be indebted to them in the sum of an hundred thousand pounds. Various causes are assigned for this,[2] which will deserve to be inquired into. The trial of Major Disney is almost

Voyage to Hudson's Bay, by the Dobbs' Galley and California, in 1746 and 1747, for discovering a North-West Passage, London, 1748; and in 1749 he had been made a fellow of the Royal Society. The statement that he drew up the Proclamation of 1763 (see also p. 99) is new; but it is not inherently improbable, in view of the fact that on April 30, 1763, he was granted a commission as secretary, clerk of the Council, commissary or steward-general of provisions and stores, and clerk of the enrolments, with power to appoint deputies—a conglomeration of sinecure offices which argued on his part considerable influence in high places. He held his patent for these offices until March, 1769.

[1] This idea, with slight differences of detail, was adopted in the Quebec Revenue Act, 1774, section 1.

[2] One of these causes was without doubt the disturbance created in the west by the Conspiracy of Pontiac (1763-1766). Another was the unsatisfactory state of affairs prevailing at the western posts: there was no definite civil jurisdiction at these posts, nor were they annexed for civil purposes to any particular province. On April 5, 1769, the British and Canadian merchants presented a petition to the Council praying for new regulations for the trade of the upper country; and on April 24, 1769, a committee of Council submitted a long report on the subject (Canadian Archives, Q 6, pp. 83-99), in which they recommended that the western posts should be brought under the government of one province, preferably of Quebec. The report was sent to England, and doubtless influenced the terms of the Quebec Act of 1774, by which the boundaries of Quebec were enlarged to include the western posts.

printed,[1] and will be sent to England as soon as it is finished. When you see it, you will learn more about Mr: Walker's affair from it that I could write to you in a long letter. That and MacGovock's two long depositions[2] are the principal evidence yet given about it. It has been much the fashion to decry MacGovock. I, for my part, do not see any reason to disbelieve him, or to think him an abandoned perjured villain. He seems to me to be on a footing with other accomplices that turn witnesses of the crimes they have had a hand in. As to Mr: Hey's having refused to bail the prisoners,[3] Mr: Hey himself has given a very full account of that matter in a packet sent to Serjeant Leigh, which I suppose you may have seen. Mr: and Mrs: Hey are both very well. They have as yet no children; no more has counsellor Johnston[4] by his young wife who is a very beautiful woman. This is a long letter, that, I think, deserves two or three in return. I beg you would give my compliment to Mr: Knipe,[5] with hearty wishes for the Success of his cause. Present my compliments likewise to my friends Mr: John Ley, recorder of Exeter, and Kerby, and to Mr: Harrison and Mr: Hyde, the city-counsel, the latter of whom has succeeded me on the western circuit; I hope, with better Success than I met with; and to Dunning and Mansfield and Selwyn,[6] and all my other friends at the bar, and believe me to be, with true regard and a real desire of serving you whenever any opportunity shall offer, your

most obedient and humble servant,

F: Maseres.

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[1] See note 3, p. 58.

[2] See note 1, p. 45.

[3] See note 2, p. 50.

[4] The identity of this person is not clear. On February 16, 1768, Carleton recommended for admission to the Council James Johnston, who had been foreman of the famous Grand Jury of Quebec in 1764; but in 1767 there does not appear to have been any member of the Council who bore the name Johnston.

[5] See note 5, p. 47.

[6] Probably William Selwyn, afterwards treasurer of Lincoln's Inn, and cousin of the more famous George Augustus Selwyn.

To Fowler Walker, Esq^r.

Quebec, March 30, 1768.

Dear Sir,

I received some time since your favour of the 9th October, 1767, which gave me very great pleasure. Pray make no more excuses about the length of your letters, and set it down for a standing rule that the longer they are the better I shall like them. I am sorry you have been so poorly supported and rewarded for your services to the province in preventing General Murray's return.[1] Mr: Carleton has just received by the December packet a formal assurance from Lord Shelburne by the king's order that he shall soon be Governour-in-chief; but he has not yet received his commission. He has likewise received an order of the king in council to inquire in conjunction with the chief Justice and attorney-general into the state of public justice in this province,[2] and set forth to the king what are the laws now in force and practice here, what were the laws in the time of the French government, what parts of those laws deserve to be continued, how far it would be convenient to blend them with the English laws, and what would be the best plan for the Administration of Justice in this province, and with the assistance of the council to reduce these things into the form of Ordinance of this province, but not to pass them into ordinances, but send them home to the king to be examined by him in council and, if approved, to be afterwards finally confirmed by authority of parliament. This I think is the right way of proceeding, though it will cut us out a great deal of work. I think it does the ministry credit, and am not ill-pleased to observe that it is in great degree the method that was suggested in the little pamphlet which I drew up for Lord Rockingham's ministry by Gen: Carleton's and Mr:

[1] This passage appears to herald the termination of Fowler Walker's connection with the province as agent for the British merchants.

[2] See the resolution of the Privy Council as to information required concerning the province of Quebec, August 28, 1767, Canadian Archives, Q 4, p. 327; printed in Shortt and Doughty (eds.), *Documents relating to the Constitutional History of Canada, 1763-1791*, pp. 199-200.

Hey's direction.[1] The plan that I would advise for the Administration of Justice is in a few words this; that the country should be divided, as formerly, into three districts or Jurisdictions, those of Quebec, Montreal, and Three rivers; and that in each Jurisdiction there should be a king's Judge continually resident with full powers to try all causes criminal and civil. These Judges should be English barristers at law, such as Mr: Hey. They should sit once a week all the year round, namely, every Tuesday, and oftener, if need were, and try all sorts of causes as fast as they arose. They should have a salary of £1000 a year each, penny-rent. They should have Canadian or French assessors, who should assist them in hearing and understanding the causes. These persons would be useful to prevent their mistaking the evidence given by the witnesses, often-times in bad French pronounced ill and expressed confusedly, which an English Gentleman who understood the French language tolerably well would find it difficult to comprehend: they would also inform the English judge concerning the laws and customs of the country, and point out to him the passages in the French law-books that explained them. But they should be mere assistants to the English Judge, and have no voice in determining the cases. For they would neither be men of such ability as the English Judges (if well chosen), would be: (for the French lawyers here, out of whom these assessors must be taken, are but a sort of half-bred attornies,) and besides they would be much more liable to be byassed by private piques or friendships than the English Judges. These assessors might be Catholicks (as they would have no vote or power), if protestants fit for the office could not be found. They should have a Salary of £200 a year, each, which would be sufficient to engage the best of these French lawyers to quit their private business and accept these places. The parties might have Juries if they desired it; otherwise not. The Juries should be paid for their attendance by the parties, or if only one party desired to have them, by the party that so desired

[1] See note 2, p. 45.

them; perhaps a dollar a man, that is, 4*s*. 6*d*. sterling a man.[1] The Juries should be named by the parties in the manner of special Juries, to prevent the disagreeable and captious practice of challenging Jurors, which is apt to occasion animosities. An appeal should lie from the Judges of Three rivers and Montreal to the Judge of Quebec, merely to preserve an uniformity in the decisions of the three courts and prevent the gradual change in the laws of the three districts which might otherwise arise from their diversity. As these appeals would give the Judge of Quebec rather more trouble than others, he should have £1200 a year. And it would not be amiss to divide the district of Quebec, which is monstrous large, into two, and call the southern part the district of Quebec, and the northern the district of Gaspey; and so have a fourth Judge and assessor at Gaspey. The French had three such Judges, and they sat twice every week, and besides these Judges, they had the superiour court, which was only a court of appeal and entertained no original actions, and this sat once a week, so that this plan which I have proposed is very much like the French one, and therefore would be very agreeable to the Canadians. I have mentioned it to two or three Canadian gentlemen, and they were wonderfully pleased with it; and General Carleton most intirely approves it: so that I believe it will be proposed to His Majesty, as the plan for the administration of Justice.[2] The plans hitherto made have been imitations of the English method without considering the nature of the province and it's antient method of government. I have drawn up an account of the civil government and the administration of Justice in this province in the time of the French, of which I will very soon send you a

[1] By Murray's ordinance of October 4, 1764, "for regulating and establishing the currency of the province", the Spanish dollar was rated at six shillings, Halifax currency, and the British shilling at one shilling and fourpence, Halifax currency. The dollar was therefore equivalent to four shillings and sixpence sterling.

[2] The ordinance of February 1, 1770, "for the more effectual administration of justice, and for regulating the courts of law", set up courts of common pleas in only two districts, those of Quebec and Montreal, with two judges in each court, and no assessors.

copy.[1] I believe it will entertain you, and give you a fuller Idea of the nature of the country than you may have yet received. I will also send you a book of hints of regulations that might be useful in this province. These are not deliberate fixed opinions upon the subjects they mention, but such thoughts as have either been mentioned by others in my presence or have occurred to myself, and have struck me as plausible projects.

I have lately received by the December packet a very kind and friendly letter from Mr: Charles Yorke[2] in answer to two letters I had writ to him, the one from Plymouth, while we were wind-bound there, the other from this place soon after my arrival in this province. He tells me all the particulars of the proceedings of the privy council relating to his report, and says that it would actually have passed, notwithstanding the difficulties it met with from Lord Northington's opposition,[3] if the ministry had not suddenly changed.[4] I hope soon to answer this letter and in the mean time I beg you would present my respects to him. I am glad

[1] This paper has been printed in the appendix to the first volume of the *Lower Canada Jurist*, under the title *A view of the civil Government and administration of Justice in the province of Canada while it was subject to the Crown of France.*

[2] Charles Yorke (1722-1770), second son of the first Earl of Hardwicke, and his father's intellectual successor, had been solicitor-general from 1756 to 1761, and attorney-general during two periods, from 1762 to 1763 and from 1765 to 1767. As attorney-general he had had much to do with the early steps toward settling the form of government in Quebec; and there is reason to believe that the report of April 14, 1766, signed by himself and William De Grey, the solicitor-general, was almost wholly his work. It was to him largely that both Chief Justice Hey and Maseres owed their Canadian appointments; for in the Hardwicke Papers there is a note signed "H" (evidently the second Lord Hardwicke) which runs, "Mr. Hay—recommended by my brother in 1765, also Mr. Maseres for Atty Genl." In January, 1770, Yorke was appointed lord chancellor, but he died three days later before entering office.

[3] Robert Henley, first Earl of Northington (1708?-1772) had been lord chancellor from 1761 to 1766; and on July 30, 1766, he was appointed lord president of the council. On December 23, 1767, he resigned owing to ill health. For his opposition to the report of Yorke and De Grey, see the Earl of Albemarle, *Memoirs of the Marquis of Rockingham and his Contemporaries*, London, 1852, pp. 350-357.

[4] In July, 1766, the Rockingham administration was succeeded by the Chatham administration; and Yorke, whom Chatham could not forgive for his attitude in the Wilkes case, was replaced as attorney-general by William De Grey

you approve of my memorial for the proprietors of the posts.[1] It did cost me a good deal of pains. I hear that the treasury have approved our bills: they are always audited by a committee of the council here in the manner you mention before they are sent home. I am obliged to you for the offer you make of solliciting the payment of my bills at the treasury. If I should find it necessary, I may perhaps trouble you with commissions of that kind: but I have not yet much considered it. I have hitherto lived upon the income arising from my private practice, and from the fees paid me by private persons for things done for them by virtue of my office of Attorney-general, such as commissions. Mr: Walker's affair seems to be asleep. George MacGovock, the witness, has been tried for perjury committed in the trial of Major Disney, and has been acquitted, as I think, very properly.[2] This has vexed some of the violent gentlemen of the army, who were friends to the late prisoners, to the soul. The civil actions brought against Mr: Walker by those prisoners for malicious prosecutions are all ended in his favour; as is also a foolish action for words brought against him by Mr: Samuel Mackay the foreman of the grand Jury at the Montreal session in March, 1767. You will probably before this time have seen the printed account of Major Disney's trial,[3] by which you will judge of the evidence upon which that prosecution was founded, which I believe you will not reckon inconsiderable. I wish the affair may never revive during my time, as it gives rise to infinite animosities. Yet I see in this day's gazette some public abuse upon the chief Justice and myself[4] for our conduct on the late trial of MacGovock for perjury, in which I declined acting as prosecutor, as I did not approve the prosecution, and indeed did furnish a paper of remarks to Mr: Jenkins Williams,[5] who

[1] See note 1, p. 60.
[2] See note 1, p. 59.
[3] See note 3, p. 58.
[4] See Appendix B.
[5] Jenkin Williams was a newly arrived lawyer from Wales; his commission as barrister and attorney-at-law is dated October 16, 1767. He was one of the chief petitioners for a house of assembly in 1773, but not one of the petitioners

was of counsel for the defendant, and did whisper to him some hints in favour of the defendant at the trial, though by reason of my office I did not appear openly for him. This is the truth, which I do not desire to conceal, because I do not conceive it to be the duty of a counsel for the crown to endeavour in all cases to procure convictions, but only where he thinks the defendants are guilty and the proofs of their guilt to be sufficiently strong and clear. I am of Queen Elizabeth's opinion that it is not so much the duty of an attorney-general *Sequi pro dominâ reginâ* as *Sequi pro dominâ veritate.* It adds that I wrote and spoke to Jurymen, intending, I suppose, to insinuate that I wrote and spoke to the petty Jury that tried MacGovock. But this is intirely false. I had no knowledge of them or conversation with them upon the Subject. But at the preceding session at Montreal in September, where the Grand Jury, consisting of several of the same members as the former Grand Jury in March 1767, intimated a disposition to find a bill of indictment for perjury against George MacGovock, and desired that I would prepare one, I openly declined it and desired them to apply to some other counsel: for that I could not with propriety be instrumental in a prosecution which I did not approve and for which I did not think there was sufficient ground; and I wrote a letter to Mr: Cox,[1] one of the grand Jurymen, to be by him communicated to his brethren, if he in his discretion thought fit to do so, containing some reasons why I thought the prosecution an improper one. This letter he showed to three or four of the most dispassionate members of the grand jury, but did not think proper to communicate it to the whole body, for fear of inflaming matters. This is

for the repeal of the Quebec Act in 1775. In 1776 he was appointed clerk of the Legislative Council, a position which he retained until 1791. In 1782 he was appointed also solicitor-general. After 1791 he became clerk of the Executive Council of Lower Canada. In 1792 he was created a justice of the court of common pleas, and in 1794 a justice of the court of king's bench. In 1801 he was appointed an honorary member of the Executive Council, and in 1802 a member of the Legislative Council of Lower Canada. In 1812 he retired from the bench on account of old age.

[1] Probably Edward Cox, one of the Montreal petitioners for a house of assembly in 1773.

the truth concerning my conduct on those occasions, which Mr: Howard[1] in that advertisement has considerably misrepresented. But let the galled Jade wince: my withers are unwrung: so I give myself very little concern about it. However, I thought it right to undeceive you and by your means my friends in England who may happen to see this advertisement. As to the special plea which he talks of, it was made from materials that seemed to deserve great regard. I believe you may see this and all the other special pleas in Mr: Strettel's[2] hands. I think Mr: Walker has told me that he has sent them to him. The chief Justice is likewise abused in this advertisement, and charged with summing up the evidence too favourably for MacGovock; but very falsely in my opinion. I have once before had the honour of being abused in public by my predecessor in office, Mr: Suckling,[3] to whom I had never done the least injury in word or deed, unless it be one barely to have succeeded him: for you know very well that I no way sought or sollicited his dismission. The occasion of this was as follows. One Mr: Levi Solomons,[4] a Jew of a very good character, who in partnership with three other Jews had carried on a large trade in North America, and had been much concerned in furnishing provisions to the army, had been ruined by unavoidable accidents that befell him in the Indian war in 1762 and 1763. Most of their creditors had declared themselves ready to compound with them, and were willing to accept of a surrender of all their present remaining property in full satisfaction of their debts, though it did not amount to more than (if I remember right) seven shillings in the pound. But some of the creditors refused to consent to this proposal. He consulted me upon this, which was the best way to come to a final settlement

[1] Joseph Howard was a merchant of Montreal. He was one of those arrested in 1766 on suspicion of having been concerned in the assault on Thomas Walker (see note 1, p. 50); and he was prominent in attempting to break in on the monopoly of the trade at the King's posts acquired by Gray and Dunn in 1765.

[2] John Strettell was a London merchant with interests in Canada.

[3] See note 3, p. 39.

[4] The name of Levy Solomons appears among the Montreal signatories of the petition for a house of assembly in 1773 (Canadian Archives, Q 10, p. 55).

with all his creditors, that he might be inabled to exercise his industry again and engage in some new way of trade to get his living. I told him I thought a commission of bankrupts was the best expedient for that purpose, and that I was of opinion that the laws of England relating to bankrupts were *as much* introduced into this province *as any other parts* of the laws of England, and especially as those parts relating to the equitable jurisdiction exercised by the governour by virtue of his custody of the public seal, of which jurisdiction there was not one word either in the Governour's commission or instructions; and that I further thought that these laws relating to bankrupts would be singularly useful in this province. He liked the advice, and got one of his creditors (who was a creditor for £1000) to petition for a commission of bankruptcy. The Governour consulted the chief Justice upon this, who approved of the measure; and took my opinion formally in writing; and after three weeks delay granted the commission under the public Seal of the province. Immediately a great number of the trading-people made a remonstrance[1] to him concerning the mischiefs that would arise to trade in this province if these laws were introduced here, and amongst the rest your friend Mr: Alsop. Upon this the Governour took the Commission back out of the hands of the commissioners, and said he would wait a week before he restored it to them, in order to give the memorialists time (as they desired) to set forth their reasons against the Expediency of admitting and executing these laws. They at last did set forth their reasons, which appeared to be very weak ones, and by my clients desire I drew up a short view of the laws of England relating to bankrupts now in force in England together with answers to the poor objections of the memorialists at the end of it for the Governour's perusal. He thought the answers very sufficient; Yet perceiving that many of the memorialists continued obstinately to object to the introduction of these laws, pretending that it would bring on their ruin, he said he would do nothing in it till he had consulted

[1] This memorial is in the Canadian Archives, Q 5-1, p. 245.

the Lords of trade. Mr: William Grant[1] of London, partner to Robert and Alexander Grant, who has been in this province ever since June last, was very much of my way of thinking upon this subject, and had confirmed me in this way of thinking many months before when I had consulted him upon this subject. He is a very sensible man, and seems to have a great deal of knowledge of trade as well as many other subjects. He much approved of my short view of the bankrupt laws, and desired leave to have it printed in the gazette. I told him he might do as he thought proper in that respect, but that I had not myself any design of printing it. He thereupon caused it to be printed,[2] altering the title and the beginning and ending of it, which gave it the form of a representation to the governour in behalf of my client Mr: Levi [Solomons] in support of his commission and in answer to the objections that had been made to its execution. This paper offended some of the principal framers of the memorial against the execution of the bankrupt laws, by showing the weakness of the reasons contained in that memorial; and drew

[1] Later known as William Grant of St. Roch. He was a London merchant who became interested in Canada in 1763, when he bought a house and lot in Quebec (Sir James Lemoine, *Maple Leaves*, series vii, Quebec, 1906, p. 163). On October 29, 1764, Murray wrote to the Lords of Trade warning them against Grant, whom he described as "a conceited Boy" who was soliciting his friends in London to get him appointed to the Council at Quebec (Canadian Archives, Q 2, p. 233). In 1770 he married the widow of Charles Jacques Le Moyne, third Baron de Longueuil; and through this marriage he became interested in the disputes over the Mingan seigniories. In 1773 he was a member of the committee of merchants which drew up the petition for a house of assembly; and in 1775 and 1778 he was one of the petitioners for the repeal of the Quebec Act. In 1777 he was appointed the deputy of Sir Thomas Mills as receiver-general, and in 1778 he was included in the Legislative Council. In the Council, in which he sat until 1791, he was prominent in opposition to the governor's party. After 1791 he became a member of the Legislative Council of Lower Canada. In 1784 he was relieved of his post of deputy receiver-general, because of serious deficiencies in his accounts; and in 1795 the Crown took action against him to recover these deficiencies. The case, which was much protracted, was not decided until after Grant's death, which occurred about 1803; his heirs were then ordered to pay back £8,756. An interesting glimpse of Grant and his wife, the Baroness de Longueuil, is afforded by the diary of Mrs. Simcoe, who visited them in their country house at St. Helens Island near Montreal in June, 1792 (J. Ross Robertson, *The Diary of Mrs. John Graves Simcoe*, Toronto, 1911, p. 97). William Grant of St. Roch must not be confused with William (afterwards Sir William) Grant, acting attorney-general in Quebec in 1776, and later master of the rolls in England.

[2] *Quebec Gazette*, December 10, 1767.

upon me the libel you may have seen in the two next Quebec gazettes;[1] which I understood to have been composed by Mr: Aylwin,[2] a Justice of peace here, and Mr: Suckling. I could not have imagined that so innocent a paper as mine, without one word of abuse in it or even an indirect reflection upon any person, could have produced so virulent and malicious an answer: but I had the satisfaction to find that the generality of people expressed an high dissatisfaction and even indignation at it, though many of them differed from me, in their sentiments upon the bankrupt-laws and some of them had even personal prejudices against me arising from their attachment to Mr: Murray and their knowledge that I wished that he might not return to this government.

This province is a very dull and disagreeable place to live in; and if I could get a little employment in England of only £200 a year, I would prefer it to being a chief Justice here with a thousand pounds a year. Yet my ambition rises higher than that too, and I sometimes am not without hopes that, if the Government approves of my services here in these turbulent times that we have passed through, and are of opinion that I have been of some use in furnishing them with the necessary informations of the state and former constitution of this province to enable them to settle the laws and government of it for the future on some stable plan, they may think me worthy of a Welch Judgeship, or a Mastership in Chancery, or of the place now held by Sir Matthew Lamb[3] of comm[r] to the board of trade. And as Mr: Yorke has expressed himself in a very friendly manner to me in his late letter, I should not be sorry that you would take occasion, when a proper one offers, to express to him my sentiments upon the subject, as likewise to Mr: Dunning, to whom, as well

[1] See Appendix C.

[2] Thomas Aylwin had been a member of the famous Grand Jury of Quebec in 1764; and in 1778 he appears as one of the merchants petitioning for the repeal of the Quebec Act. He was the grandfather of T. C. Aylwin, solicitor-general for Lower Canada in the first Baldwin-LaFontaine administration.

[3] Sir Matthew Lamb (1705-1768) was a member of parliament, first for Stockbridge and then for Peterborough, from 1741 to his death.

as to my good friend Mr: Ley, of Exeter, and Mr: Kerby, and all my other friends at the bar I beg you would present my compliments. I am afraid that some of my letters have not been delivered; otherwise I think I must have had answers to them. I wrote to Ley last october was twelvemonth a letter to be delivered to him by Mr: Houdin; another in last July, and a third last October; yet he has not acknowledged the receipt of any of them. I wrote to Kerby last July, but have not had any answer from him. I wrote last October a letter to Dic Sutton,[1] which I hope he has received. I wrote no less than three letters to Mr: Thomas Townshend Jun^r:[2] last autumn was a twelvemonth, one of which I know he has received, and a fourth letter last Summer, but have had no letter from him. One of the first three letters to him contained a long account of the trial of the Rum-duty cause, and of the evidence given thereon concerning the duties paid on those articles in the time of the French government. I hope you have seen the little priest, who has embraced the protestant religion, and has almost starved in consequence of it, Mr. Veyssière,[3] and that something will be done for him. I gave him a letter of recommendation to Mr: Ryder, the son of the late chief Justice,[4] that he might recommend him to his father in law the bishop of London.[5] This little man can give you a true and exact account of the State of religion in this province, by which, I believe, you will be confirmed in your opinion of the bad tendency

[1] Richard Sutton (1733-1802) was an under-secretary of state from 1766 to 1772. On retiring from office, in October, 1772, he was created a baronet.

[2] Thomas Townshend, afterwards first Viscount Sydney (1733-1800), had been a lord of the Treasury from July, 1765, to December, 1767, and joint paymaster of the forces from December, 1767, to June, 1768. On this last date he resigned, and went into opposition. During the debates on the Quebec Act, he was one of the chief critics of the bill (see Cavendish, *Debates*, London, 1839, *passim*). He was, like Maseres, an alumnus of Clare College, Cambridge.

[3] See note 1, p. 57.

[4] Sir Dudley Ryder (1691-1756), lord chief justice of the king's bench from May, 1754 to his death in May, 1756. His son, Nathaniel Ryder, afterwards first Baron Harrowby (1735-1803), had been a contemporary of Maseres at Clare College, Cambridge.

[5] Richard Terrick (1710-1777), bishop of London from June, 1764, to his death in March, 1777.

of the measure Captain Cramahé persuaded Lord Rockingham's ministry to take, of giving the Canadians a Popish bishop. I have given your compliments to Mr: Cugnet[1] and the other proprietors of the posts of Mingan in the manner you desire; and he declared (as he had done more than once to me before) that he was extremely sorry that the papers had been taken out of your hands, and that it was intirely without his directions and contrary to his intentions, and that he does not doubt that you would have taken much more pains about the matter, and have managed it much better, than Mr: Murray has done. Ever since last September we have had a new lawyer here, one Mr: Jenkins Williams,[2] a Welsh man. He is a very worthy well-behaved man, very sober and assiduous, and of sufficient abilities to make a good attorney: so that he will do very well in this province and be of great service in it. He had practised in some part of Wales. Pray write to me as often as you can, and as soon as possible after the receipt of mine: for even with this diligence on your part, I shall often be seven or eight months before I receive an answer to a letter, which is really a tedious while; and desire Ley and Kerby not to forget me. I am your most obedient and humble

servant,

F: Maseres.

P.S.—George MacGovock after his acquittal went home to Mr: Walker's house escorted by Mr: Walker and his nephew Mr: Thomas,[3] who would have defended him by force if the officers of the army had attempted to seize him on his return from the court, esteeming that it would have been lawful so to do by reason of the privilege which every witness, plaintiff, or defendant has of being unmolested during his going to, staying at, and coming from one of the king's courts

[1] See note 1, p. 51.

[2] See note 5, p. 59.

[3] Little is known about Thomas Walker, junior. He appears to have come to Canada some years after his uncle; and he remained in the province after his uncle's flight from it, probably administering his property for him. A portrait in the Chateau de Ramezay at Montreal is thought to be of him.

of Justice, at which his presence has been required. As soon as he was got to Mr: Walker's house, the town-major, one Captain Hughes,[1] a violent man, came with some soldiers and required Mr: Walker to deliver up MacGovock. Walker refused to do so; and said he would resist any violent attempt to break open his house, and forcibly take him out of it. This made a noise. And the chief Justice sent me to Mr: Walker to persuade him not to think of harbouring MacGovock against the lawful authority of the army over him now that he was no longer a prisoner by the civil authority, and told me to inform him that, if he would not give him up otherwise, he would give the officers a search-warrant to search his house for him. I went accordingly, and Walker was preparing to submit, especially when he found that the chief Justice's warrant would be granted. In the mean time Mrs: Walker slipped out of the room, and told MacGovock how the case stood, and that he could not any longer be protected in their house against the officers, as the chief Justice's warrant was going to be sent for him. M. said he would then escape, for that he had rather try to escape, and be taken the next day, and shot or hanged for a deserter, than be regularly surrendered into their hands; he so much dreaded their revenge and cruelty. So he instantly made his escape, and has not yet been taken. I had not the least hand in his escape, but rather the contrary, as you may perceive, since I persuaded Walker not to persist in protecting him. But I have reason to believe that Captain Hughes, who is reckoned not to have the most scrupulous regard to truth, and who is certainly a man of a most violent temper, has writ a letter to General Gage in which he bestows much abuse upon me and represents me as a principal contriver of his escape: and I believe he even charges the chief Justice with being concerned in it. However, this gives me but little concern, or rather makes

[1] James Hughes (1738-1825) was buried in the old English burying-ground at Montreal; and the tomb-stone, now destroyed, reveals the fact that his daughter married James Walker, a justice of the court of king's bench in the district of Montreal, and his granddaughter Captain Samuel Romilly, R.E. (Canadian Archives Report, 1889, p. xvii).

me laugh at the disappointment of his fury; since, as Lord Shaftesbury says, disappointment and impotent malice are the highest objects of ridicule. However, as the poor fellow has escaped, I confess that I hope he will not be taken by them. Common humanity justifies this wish. Once more adieu.

To Fowler Walker, Esq^r.

Quebec, April 2, 1768.

Dear Sir,

Two or three days ago I wrote you a long letter containing three of these large sheets, which you will receive at the same time with this. I have mentioned in it everything I had to communicate at present except one thing relating to the Expediancy of putting the bankrupt laws in Execution in this province, which may be proper for your consideration.[1]

. . . . . .

. . . . . .

Mr. Hey, Captain Holland,[2] and myself, have just finished a public inquiry into the truth of the charges contained against Mr: Alsop in General Murray's letter to the board of trade,[3] in which he gave his reasons for superseding him from the exercise of his offices. He was charged, 1^st^ with beginning the dissensions between the civil and the military after the establishment of civil government; 2^dly,^ with instigating the grand Jury to make those famous presentments;[4] and 3^dly,^

[1] What follows here, being purely legal and technical, is omitted.

[2] Samuel Holland (1717-1801) was surveyor-general of the province, and had been a member of the Council since the establishment of civil government. He was a captain in the Royal American Regiment, and had been with Wolfe at the sieges of Louisbourg and Quebec. During the period of military government he was employed on General Murray's staff as an engineer officer. As surveyor-general, he was engaged for many years in making surveys of practically all the provinces in the northern part of North America. He continued to be a member of the Council until 1775; he was a member of the Legislative Council from 1775 to 1791; and after 1791 he was a member of both the Executive and Legislative Councils. He died at his house in the Ste. Foy road, near Quebec, in December, 1801.

[3] The proceedings and report of this board of inquiry are in the Canadian Archives, Q 5-2, pp. 629-722.

[4] The presentments of the Grand Jury of Quebec in 1764. These presentments are printed in Shortt and Doughty (eds.), *Documents*, pp. 153-156.

with making it the business of his life to revile and defame Governour Murray and the members of the council in a most licentious and illiberal manner. Nobody chose to give evidence in support of this 3[d] charge, though I have been told in private by several persons that there was but too much truth in it. The second charge of instigating the grand Jury was proved to be true only with respect to one presentment, namely, the last against the admission of Papists to be Jurymen. The grand Jurymen who were examined all declared that Mr: Alsop had never in the least excited them to make those presentments, excepting Mr. Aylwin, who said that Mr: Alsop had advised him to make that last presentment, but no other, and that he had done it in consequence of that advice. But it appeared clear by that Alsop was one of the committee who prepared the letter [of] thanks[1] to that grand Jury, and that he composed the third or last paragraph of it, and suggested the word *spirited* in the first paragraph, and thereby became, though not an instigator of that Grand Jury in that affair, an abettor and supporter of them in it. But for my own part, I think these presentments were not near so mischievous as they have been represented to be, and that they may be well enough excused in young grand Jurymen, ignorant of the nature of their office, and in some degree misled by an injudicious charge given them by the chairman of the Sessions.[2] And the last presentment, about the Papists, which Mr: [Alsop] was proved to have advised, was in my opinion very little deserving [of blame], since it only tended to an execution of the disqualifying laws against Papists (which are looked upon in general to be laws of self-defence, necessary to the Safety of the government even in England itself where the number of papists is but small, and therefore must be much more so in this new conquered province, where their number is very great) and not to an execution of the penal laws against them. The first charge against Mr: Alsop, that of

[1] No trace of this letter is to be found in the State papers.

[2] Samuel Gridley.

beginning the dissensions between the civil and military, was in my opinion a heavier charge and better proved. For it appeared that Mr: Alsop had at three different times been stopped by the sentinels and taken into custody by them for walking the streets at night without a light; once in March 1764, and twice in the October of the same year. On these occasions, he used indecent and illiberal expressions against the army, such as telling them that they were a set of Scoundrels from the highest to the lowest, and that he maintained thousands of them every day: These expressions provoked the military extremely and were the cause of his being confined once or twice much longer than perhaps any other person in the town would have been on the like occasions if they by accident had been taken into custody for a like neglect. On the two last occasions he had a scuffle with the sentinels, and immediately caused them to be indicted before the Justices of the quarter sessions in their Michaelmas session for an assault upon him. One of them was acquitted and the other convicted with grav[e diffi-]culty after the Jury had withdrawn for more than two hours, and was fined only one shilling. The Justices of the peace who tried these [present]-ments were examined and declared unanimously that they much disapproved these prosecutions, thinking them very frivolous and improper. And Mr: Samuel Gridley, one of the Justices, said that he had endeavoured to dissuade Mr: Alsop from bringing these prosecutions before they were brought, but without success, Mr. Alsop answering that he had received notice that the officers intended to make one of the sentinels prosecute him for an assault on the same occasion, and that therefore he was resolved to be beforehand with them. Dr: Brook,[1] who was called in behalf of Mr: Alsop, testified that he had likewise endeavoured to dissuade Alsop from carrying on these prosecutions, but without success, Alsop answering as has been related. It did not appear indeed that Alsop went without a light for the sake of disobeying the garrison-order and quarrelling with the army;

[1] See note 1, p. 46.

but that when by some accident he had happened to be without a light and was stopped by them on that account, he used such expressions as were very blameworthy and highly incensed the army. Col. Irving[1] said that this was the first dispute between the civil and military since the establishment of civil government, and that it occasioned great dissensions between them, and particularly that the prosecuting the two sentinels was the occasion of all the officers of the whole garrison presenting a remonstrance[2] to Governour Murray concerning the hardship they lay under by being liable to be prosecuted at law for doing their duty in obedience to the orders they had received. This is a true account of the evidence given on this inquiry, in the course of which Mr: Alsop thinks I have been too sharp in examining the witnessess to discover matters to his prejudice. But I have only not considered it as a sham inquiry, and have endeavoured to find out the truth, some of which, as you see, has turned out in his favour.

I remain your

Most faithful and obedient humble

Servant, F: Maseres.

P.S. It appeared by the evidence of several of the members of that famous grand Jury that the French Jurors were not imposed upon by the English ones, and made to sign presentments that they did not know the sense of: for that Mr: Peter Faneuil,[3] who understands French very well, and some others of the Jury who understood French, took great pains in interpreting and explaining all the

[1] Paulus Aemilius Irving (1714-1796) was lieutenant-colonel of the 15th Regiment and deputy quartermaster-general at Quebec. He had commanded his regiment at the battle of the Plains of Abraham in 1759. In August, 1764, he was appointed a member of the first Council of the province; and he acted as administrator of the province from the departure of Murray in June, 1766, until the arrival of Carleton in Septemper, 1766. He came into conflict with Carleton, first over Carleton's failure to consult the whole Council, and second over a petition which he signed asking that bail might be granted the prisoners accused of the assault on Thomas Walker (Canadian Archives Report, 1888, Note A, pp. 6-7); and on Decèmber 1, 1766, he was dismissed by Carleton from the Council. In 1771 he was appointed lieutenant-governor of Guernsey.

[2] Canadian Archives, C.O. 42, vol. 4, p. 241.

[3] A member of the Faneuil family of Boston, Massachusetts.

presentments to the French Jurors before they were presented, and obtained their full approbation and concurrence in them after such full explanation. General Murray seems therefore to have grossly misrepresented the conduct of the English grand Jurors on this occasion to his Majesty by informing him that they had imposed upon the French Jurors and made them sign what they did not know the meaning of.[1] He is said to be a man that has no regard to truth, and this seems to be a proof of it.

To Fowler Walker, Esq.

Quebec, April 4, 1768.

Dear Sir,

I have just writ to you two long letters, one of three of these sheets of paper, the other of two. In one of them I have given you an account of an abusive paper writ against me in the Quebec gazette[2] on account of the share I took, though merely in the way of my profession, of recommending the introduction of the bankrupt-laws. In that paper I am said to have been the author of a dangerous project, called a Civil bill, in which I was disappointed of my hopes of hurting the liberties of my fellow subjects. Now this I would have you rightly understand. You may remember that Mr: Yorke and yourself recommended to us the introducing into this province by ordinance a short and simple method of recovering small debts upon the plan of the method used in Barbadoes, or the Civil bill in Ireland. I further of my own accord strongly recommended to Mr: Hey the making another ordinance to hold his sessions of the Supreme Court once in every month, which I looked upon as necessary for the completion of the other scheme of making the recovery of small debts very easy. This scheme I thought would gradually undermine the court of common pleas, and make the Canadians bring their causes into the Supreme court,

[1] See, however, the statement of the French jurors in reference to the presentments, printed in Shortt and Doughty (eds.), *Documents*, pp. 156-161.

[2] See Appendix B.

when they found that it was attended with the advantages of cheapness and dispatch as well as with those of great rectitude and ability in the decisions: and thus the daily complaints against the court of common pleas would cease, and the court die away of itself without the necessity of abolishing it, which in the present situation of things would be impracticable, since it would be tantamount to abolishing the administration of Justice, because ten causes are brought in that court to one in the court of king's bench or supreme court. This court is much complained of for the irregularity, hastiness, and injustice of its decisions, arising not from the corruption, but the inability and want of legal knowledge in the Judges of it. They are three in number. The most sensible and able of them is a Mr: Mabane,[1] an army-surgeon; the other two are Captain John Fraser,[2] paymaster of the troops at Montreal, an half-pay officer, bred at the Jesuits college at Douay in Flanders, as I have heard, and a Mr: Monnier,[3] a Frenchman, who can't speak three words of

[1] Adam Mabane (1734-1792) was a Scotsman, who had studied medicine at Edinburgh University. He was a cousin of James Thomson the poet. During the period of military rule, he had been surgeon's mate at the military hospital at Quebec. On the establishment of civil government, he was made a member of the Council and a judge of the court of common pleas. In 1766 he was dismissed from the Council by Carleton for signing the petition praying that bail be granted the prisoners in the Walker case. He was appointed, however, to the Legislative Council in 1775; and he became the friend and confidante of Haldimand, during the latter's régime. In 1791 he was appointed a member of the Executive Council of Lower Canada, but did not take his seat, as his death occurred on January 3, 1792. For a fuller account of his life, see l'Abbé Louis Bois, *Le Juge Adam Mabane: Etude historique*, Quebec, 1881.

[2] Captain John Fraser, a half-pay officer in the 27th Regiment, was one of the prisoners arrested on suspicion of being concerned in the assault on Thomas Walker in 1764. He was made a judge of the court of common pleas on December 11, 1764, and continued to occupy that position until his death in 1795. From 1775 to 1791 he was a member of the Legislative Council under the Quebec Act; and from 1791 to 1795 a member of the Legislative Council of Lower Canada under the Constitutional Act. He married the daughter of a French-Canadian seigneur named Deschambault, another of whose daughters was the Baroness de Longueuil (Maseres, *Additional Papers concerning Quebeck*, pp. 6-7). A memorial of his widow, stating her husband's services, is in the Canadian Archives, Q 75-1, p. 54.

[3] François Mounier was one of the few French-Canadian Protestants in the province. On August 13, 1764, he was sworn in as a member of the first Council; and he was appointed on December 11, 1764, a judge of the court of common pleas. In 1766 he was one of the members of Council who protested against Carleton's failure to consult the whole Council. He died in the beginning of August, 1769.

English, who was bred a merchant, and still continues so. He is a man of good plain sense, and I believe a very honest man. Fraser is strongly suspected of having had a hand in the assault upon Mr: Walker,[1] and is generally reckoned a very proud man, and of a fierce and violent temper. His principal merit seems to be a decent and polite behaviour. He shews no great knowledge, nor even natural acuteness upon the bench. The French say things are strangely altered, since a man whom they remember a merchant's clerk, (Monnier) a surgeon and a half pay officer are now some of the principal Judges of their property. But to return to the two intended ordinances. That for the summary method of proceeding was pretty difficult to draw, as I had intended to make it quite plain, and to set out every step and process in the action, and forms of them, and the fees to be taken for them, at full length in the ordinance, so that a Canadian of common sense, that knew how to read, (which in this country is a great degree of learning) might understand how to carry an action through the court without the least knowledge of the English law or the Hocus Pocus and Jargon of our books of practice. I did once begin it, but never have finished it to this day. The other for fixing the Sessions to be once a month was much easier to draw, and therefore I begun with it, and did prepare a draught of it, of which I send you a copy here inclosed.[2] It appointed twelve sessions of the Supreme Court in a year, to wit, one at the beginning of every month; to be held de die in diem till the business ready for decision was gone through, and then to be adjourned to the next month; ten of which sessions were to be at Quebec, and two at Montreal, to wit, in the months of February and September. As speedy Justice seems to be so evidently an advantage to a country, I considered this as an Ordinance to which it was impossible for any mortal to object; I thought there could not be two opinions about it: it was a present to the public of so much more of Mr: Hey's

[1] See note 1, p. 50.

[2] This enclosure is missing.

time and trouble than they would otherwise reap the benefits of. Mr: Hey indeed might have objected to it on that score; but he resolved to sacrifice his own ease to the service of the public, and consented to this proposal, and mentioned it to the grand Jury in his charge to them as a thing under consideration. One Panet,[1] a French notary and lawyer, of a busy and turbulent disposition, and said to be very greedy of money, took a sort of alarm at it, as I suppose, through the fear of a diminution of the business of the court of common pleas, of which he had a great share: but he pretended that it would alarm the Canadians by making them apprehend that there was a desire of abolishing the court of common pleas, and with it the liberty of pleading their causes in the French language, and the small remaining regard still paid to their antient laws and usages. This was a most ridiculous apprehension, since the principal design of the ordinance was to please the Canadians by giving them an opportunity of having their Causes decided in a cheap and expeditious manner by the ablest Judge in the whole province. And if the Judges of the common pleas had declared an inclination to sit as often or oftener, no one would have objected to the passing another ordinance immediately for that purpose. However, this man had influence enough over Captain Cramahé[2] to persuade him to adopt these foolish reasons, and give it as his opinion that this ordinance ought not to be passed, at least not at that time. Nevertheless, as I said before, Mr: Hey did mention it in his charge to the grand Jury, as a thing under consideration if the public should approve it. And he said that, if it was thought that the attendance of Jurymen so often as once a month would be inconvenient, a clause should be added to the ordinance that Juries should be summoned only every other, or every third

[1] Possibly Claude Panet, to whom a commission was issued on October 6, 1767, as barrister and advocate.

[2] See note 4, p. 43. Cramahé had early established an influence over Carleton: in March, 1767, Walter Murray, one of the discontented councillors, wrote to General Murray that Carleton was being led "by his Triumvirate, Cramahie, Mills, and Dunn" (Canadian Archives, M 898 D, bundle viii).

session, as should be thought most convenient; and that the other sessions, at which Juries were not assembled, should be employed in entering declarations and pleas, and arguing demurrers, or making motions in arrest of Judgment, and the like, so as to expedite the progress of a cause in all those particulars that could be done without a Jury. This took away the only shadow of an objection to this ordinance. Yet behold! to my infinite astonishment, seven wise men, of the English part of the grand Jury, and amongst them Mr: Alsop, made a remonstrance against this ordinance because it would enable creditors to come too soon to a judgment against their debtors; by which I learnt for the first time in my life that speedy justice was an inconvenience to a country, having always till that time remained in a very mistaken opinion that it was a blessing most devoutly to be wished for, and that in order to a *perfect* system of the administration of Justice it would be necessary that the best courts of Justice in the country should sit not every month, as now proposed, nor yet every week, nor even twice a week, as they did in the time of the French government, but *every day* in the whole year, excepting Sundays and Holidays. Mr: Hey, I believe, was not sorry that these wise men thought proper to refuse this offer he had made to the public of so much of his time and trouble; and so the thing was dropt: since which and the slighting treatment the little converted priest[1] received from General Carleton, and which, as he assured me, discouraged two other priests from following his example, I confess I have been a good deal out of heart with respect to all schemes for the benefit of the province; and have not that hope and pleasure of seeing things mend and improve by quick degrees that alone can balance the disagreeable circumstances of living in a sort of banishment in this frozen kingdom of the Northwind. It freezes as hard today, and has done so through most of the month of March, as in the middle of January in England in a hard winter. The ground is still all covered with snow, except here and

[1] Veyssière (see note 1, p. 57).

there a small patch upon a hillock of a few yards in length. Mr: Hey, I suppose, did in that speech to the grand Jury in which he mentioned the intention of establishing monthly sessions of the Supreme court, mention also the further intention of establishing a summary method of proceeding for the recovery of small debts in imitation of the bench actions of Barbadoes or the civil bill in Ireland. This they did not object to, but rather seemed to approve: and this Mr: Hey still continues to intend to have done. But various occupations, and in some degree a despair of its being of much use unless the Sessions are likewise very frequent, have hindered me from compleating the draught of this ordinance to this hour. Which of these intended ordinances the virulent writer of the paper against me means by the *Civil bill* he speaks of, I cannot tell; but it is certain only the ordinance for monthly Sessions was prepared by me, and prevented from taking place by the remonstrance of the seven grand Jurymen. Several Frenchmen have told me since that time that they wondered much that any persons should object to so beneficial a proposal, and that they were very sorry it did not take effect. I have this day learned from the New York papers the changes in the ministry, one of which I like, which is the appointment of a Secretary of State for the plantations.[1] In other respects I am sorry to see these changes, as they are proofs of the weakness and unsettledness of his Majesty's counsels which I conceive to be so very detrimental to the public that the contrary extreme of making all the great officers hold their places for life like Cardinal Wolsey, would hardly be more so. I have been greatly surprised at the last preferment of Sergeant Hewet.[2] That he should be made a Judge of the king's bench was natural enough: but the transformation of him

[1] See note 6, p. 61.

[2] James Hewitt, afterwards Viscount Lifford (1709-1789), son of a mercer and draper of Coventry, was appointed king's serjeant in 1759, a judge of the king's bench in 1766, and lord chancellor of Ireland on January 9, 1768. When appointed Lord Chancellor, he was raised to the peerage as Baron Lifford; and in 1781 he was created a viscount.

into a Peer and a Lord Chancellor should be added as a supplement to Ovid's Metamorphoses. It is time to put an end to this tedious set of epistles which you will be troubled with from me all at once by this post. I therefore conclude by assuring you that I am your

Most faithful and obedient humble
Servant, Francis Maseres.

To Charles Yorke, Esq^r.[1]

Quebec, May 27, 1768.

Sir,

I have received your favour of the 29th of September last, by which I esteem myself honoured as well as gratified in a most agreeable manner. I doubt not the propriety of your motives of resignation; but am sorry that the conduct of others, whoever they may be, (for I know not who they were) gave existence to such motives. It seemed to me so natural that you should fill that post at the bar, that when you have resigned it, I have been apt to entertain a Jacobite Idea and consider you as Attorney general *de Jure*. I am extremely obliged to you for the account you give me of the manner and occasion of laying aside your report,[2] which I never understood before, having indeed conjectured that it was rejected out of the modern principle of low œconomy, so much practised in all the useful parts of government, because it advised the making two or three Judges instead of one. I cannot help wondering that the Lords of trade should have ever consulted Mr: Pownal,[3] their secretary, about a plan for settling this colony, as he appears to me to be a man of a very middling understanding. In the cause for the rum-duties[4] I earnestly sollicited the Jury to find a special verdict, as it was an indecent thing for them to

[1] See note 2, p. 68.

[2] See note 1, p. 53.

[3] John Pownall (1720-1795), elder brother of Governor Thomas Pownall, was gazetted secretary to the Lords Commissioners of Trade and Plantations in 1745, and held that post until 1768, when he became under-secretary of state for the American department.

[4] See note 2, p. 49.

arrogate to themselves the high province of determining the point of law that happened to be involved in the general issue of *not guilty* which they were to try: and the Judge directed them to the same purpose: but all in vain. However I doubt very much whether the point of law itself was with the crown; for, though I readily admit the great proposition, upon which we founded the king's claim, to wit, that those duties which legally subsisted under the French government at the time of the conquest were by the conquest immediately transferred to the king of Great Britain, yet I do not think that that proposition applied to the case in question: for these reasons. In the first place the French duty was upon *French rums and brandies*, that is, to use the words of the edicts that imposed them, upon rums and brandies imported into this province from *Old France* or the *French West India* islands. This cannot be made to extend to brandies and rums not imported from Old France or the French West India islands, but from England and the English colonies without a reasoning by analogy, which is hardly sufficient ground to warrant a tax. 2^dly. The king had for several years neglected to levy this tax, which may be construed as a relinquishment of it by the crown; more especially as the crown had, in conjunction with the parliament, by Stat: 4 Geo. 3, cap: 15, laid a tax upon liquors imported into this or any other of the North-American colonies. It may very plausibly, and, I incline to think, justly, be contended that, if his majesty had intended to continue the old duties, he would in that act have mentioned them and declared them to be continued, and then would have added that besides those old duties the new ones mentioned in that act should be imposed: and that consequently, as he has not done so, he has plainly shewn that he meant to give up the old duties at the time of making that act and to impose new duties in their stead in common with the other neighbouring colonies of North-America. Indeed, if this were not so, it would perhaps be hard upon the people of this Colony, (which is the poorest in all America) as they would be obliged to pay both the old French duties and the

new ones imposed by that act of parliament in common with the rest of North America. These and other reasons that might be alledged would, I apprehend, have prevented the success of this prosecution if the point had been properly reserved for the decision of the Judge and the subsequent courts of appeal; though through the great inability of the counsel for the defendant in that cause, these topics were very little insisted upon. They made speeches, and wretched ones, about the liberty of the Subject and the prerogative of the crown, the petition of rights, the bill of rights, and magna charta, which they had prepared beforehand, but which were nothing to the purpose and so appeared perfectly ridiculous after I had repeatedly declared in opening the king's claim that, whatever his Majesty's prerogatives might be (which I would not pretend to determine nor even enter into) with respect to the right of imposing taxes in this province, his majesty did not on this occasion mean to exercise any such prerogative, but only to claim these duties as duties already legally subsisting in this province and transferred to him by right of conquest in the same manner as the castle of Saint Lewis, the Intendant's palace, and the rest of the king's demesne. Yet they spoke, or rather read, their speeches fill'd with those common-place topics, which were as little to the purpose as the speech of the lawyer Ponticus in Martial's Epigram. Lis est mihi de tribus capellis. Tu perjuria Punici furoris, et Pyrrhum Mithridaticumque bellum &c. Nunc dic, Pontice, de tribus Capellis.[1] Since therefore his Majesty's claim to those duties appears to me to have been but weakly grounded, I must own I could have wished that the parliament had that very session that we came from England imposed such duties as had been thought proper to be raised, to take away at once all difficulty and dispute

[1] Maseres is quoting from memory from Martial's Epigrams, Book VI, xix:
"Sed lis est mihi de tribus capellis.

. . . . .
Tu Cannas, Mithridaticumque bellum,
Et perjuria Punici furoris,
. . . . .
Jam dic, Posthume, de tribus capellis."

about them. And I think it would have been particularly seasonable to do so at that time, as it would have been a beneficial exertion of that taxative authority which the Parliament claimed over the colonies and which they made an act of parliament on purpose to declare. Such an exertion would have shewn the Americans that the parliament was really in earnest in their assertion of the right of taxing them, and did not mean to assert it only in words and upon parchment, which is what all the Americans now conceive. Even now I could wish that the parliament would impose some taxes here, rather than erect a house of assembly, which I understand is Lord Hilsborough's design,[1] but which we all fear here will increase the confusions of the province. However, if there must be an assembly, I think his lordship is quite right in throwing the representation into the hands of the Seigniors and landed men, which Mr: Fowler Walker tells me is his design. I drew up last year a little sketch of a plan for a house of assembly, in case we needs must have one:[2] And I sent last autumn a copy of it to my worthy friend counsellor Ley of the bar, (and who often attends the Chancery bar) who will show it to you, if you desire to see it. The substance of it in few words is this. This colony consists of two orders of men, the seigniors who hold of the king by the noble[3] holding of fealty and homage considerable tracts of lands, (usually about six miles square, or 36 square miles) and the peasants, or freeholders, who hold small parcels of land, usually about 60 or 100 acres, of the Seigniors by a quit-service. These men are equally free in their

[1] A detailed proposal for the erection of a house of representatives in Quebec is contained in the "Report of the Lords Commissioners for Trade and Plantations relative to the State of the Province of Quebec", dated July 10, 1769 (Canadian Archives, Q 18 B, p. 7). The details of this proposal are, however, not quite the same as those which Maseres understood Hillsborough to have had in mind.

[2] This sketch is doubtless the same as the "Plan of a general assembly of the Freeholders of the Province of Quebec", included in Maseres' pamphlet, *Things necessary to be settled in the Province of Quebec, either by the King's order in Council, or by act of Parliament*, [London, 1772 or 1773], pp. 11-20.

[3] This is an error; the possession of a seigniory in New France did not confer the status of nobility (see W. B. Munro, *The Seigniorial System in Canada*, Harvard Historical Studies, XIII, p. 161).

persons and property, none of them holding at the will of the Lord, but all by certain and those very small quitrents, usually a penny an acre; and therefore they are both, in point of natural justice and equity, equally intitled to a share in the legislative authority of the province. Yet, as they are evidently distinct classes of men, holding by distinct tenures, and with distinct privileges, it is not reasonable that they should be mixed and confounded together in the elections of representatives, unless it was the intention of government to destroy this constitution of the province, and take away these different holdings and privileges and settle everything upon the republican levelling plan of the other colonies, which in my opinion would be both unjust and impolitick. This then being the case, I would propose that from every Seigniory two members should be chosen, one by the several proprietors of the Seigniory (for Seigniories are partible both by inheritance and by alienation, as well as the peasants-lands held by rent-service) to represent the Seigneurial interest of the seigniory, and the other by the peasants or freeholders of the seigniory to represent their interests. This would be an house of assembly founded upon the nature of the present constitution. They should all sit in the same house, to preserve union, and prevent the jarring of two co-ordinate houses, and some one of the crown-officers should be president or speaker of it, as the Chancellor is of the house of Lords in Great-Britain. The rule of inheritance in this country amongst the freeholders or peasants is an absolute gavel kind, more compleat than that in Kent, being an equal partition of the land amongst all the children, daughters as well as sons: and the rule of inheritance amongst the seigniors, or tenants of the crown by fealty and homage, is that the eldest son has one half of the father's seigniory, or part of the seigniory, and, besides this half, one arpent or French acre, (being $\frac{5}{6}$ of an English acre) of land, wherever he thinks fit to chuse it, which usually is the ground-plot upon which the manor house is built and the yard belonging [to] it: the other half is to be equally divided

amongst all the other children, daughters as well as sons. So that seigniories as well as other lands are subdivided in this country very fast, and there will very soon in all probability be very few proprietors of a whole seigniory. Hence arises the necessity of an election among the co-seigniors, or the several proprietors of parts of an original seigniory. These seigniories are but poor things, being worth upon an average not more than 60 pounds a year apiece. When they are full settled and improved, 'tis thought they will be worth about £200 a year each. With respect to the administration of Justice in this province, I conceive that the best plan to be followed would be this, which is very simple, and is formed in imitation of the plan that prevailed here in the time of the French government and which the Canadians are fond of; that the king should send three separate judges to this province for the three separate districts of Quebec, Three rivers, and Montreal, who should constantly reside at these three places, and administer Justice weekly, that is, every Tuesday throughout the year (In the time of the French they used to sit twice a week) both in criminal and civil matters; that these Judges should be English barristers at law, of good abilities and integrity, such as Mr: Hey, who should make it their business to learn the French language; and that they should have a salary of £1000 sterling each; and that to each of these royal judges should be added a Canadian assistant or assessor, to sit with him on the bench, and help him to understand both the French laws and customs and point out to him the books and authorities to be consulted upon them in the questions under consideration, and likewise to understand the vivâ voce evidence delivered by the witnesses, which otherwise might puzzle an English gentleman who was pretty well versed in French. But these assessors should only assist and advise, but have no voice in the decision of the matter, which should be determined intirely by the English Judge. These assessors should have £200 a year each, and should be chosen out of the Notaries or French lawyers of the province, and might be Roman

Catholicks, if no protestants can be found fit for the employment: for if such can be found, they ought always to have the preference. There must likewise in this case be a king's attorney to each court, who should also be an English barrister, in order to be qualified to succeed to the Judges places, when they become vacant: and these king's attornies might have 5 or £600 a year. This makes £6000 a year, no great sum in my opinion for settling a good administration of justice in an important province. In order to provide a fund for this and some other such useful purposes let the reversion of the Auditorship of the Exchequer in England (after Lord Lincoln's[1] death) be settled by act of parliament in the Governor, or the receiver-general of this province for the time being, or both jointly, in trust for the said public uses; and thus this terrible objection of the expence will be removed. Let all these Judges, assessors, and king's attornies hold their places during the king's pleasure only; and thus the king will have nine of the cleverest men in the province much in his dependance, and perhaps nine more partly so in expectation of succeeding to these places, which may tend very much to keep the province quiet and prevent them from throwing off their subjection to Great-Britain in some future conjuncture after the example of the other colonies. Such a precaution would probably have prevented many of the English Colonies from acting as they have done. As to Juries, they should all be chose after the manner of special Juries, to prevent as much as possible the captious and disagreeable circumstances of challenging Jurymen, which often makes ill blood. And the Jurymen who try a cause should be paid by the parties for their attendance, about a dollar or a crown a man; for the French hate to attend upon juries, and it is hard to force them against their wills. And unanimity ought not to be required amongst them; but a bare majority ought to be sufficient to acquit, or even a large

[1] Henry Fiennes Clinton, ninth Earl of Lincoln (1720-1794), was a nephew and son-in-law of Henry Pelham, and nephew of Thomas Pelham, whom he succeeded in 1768 as second Duke of Newcastle-under-Lyne. The auditorship of the exchequer was a lucrative sinecure.

minority, such as a third part, so that more than two thirds should be necessary to convict, or some other provision of that nature should be made in order to prevent the necessity which jurymen now lye under in about every third or fourth cause of going contrary to their oaths and acceding to the opinion of the majority in opposition to their own Judgment. And the parties should be at liberty to have their causes tried with, or without, a Jury, as they liked best: if one of them only desired to have a Jury, he alone should pay the Jury. The declaration, plea, or defence, replication, &c, should be in either French or English, as the parties pleaded, and should never be filed till they had been read in court, and approved by the Judge; which would avoid blundering pleas, and vitious declarations, and all the vexations and dilatory consequences that follow from them. And the issues, or points of fact to be inquired into, should be drawn up in court by the direction of the Judge, and in words dictated by him, as a degree in Chancery is drawn up in England in words dictated by the Chancellor. This would avoid the stupid blunders otherwise likely to be committed by the clerks of the courts. The chief Justice and the Lieutenant-governour both are much pleased with this scheme for the administration of Justice. I have in a letter sent about a month since communicated it to Mr: Fowler Walker.[1] But as for the more weighty business of determining what part of the French law shall continue to subsist in this province, and what shall be abolished, which his Majesty by a late order in his privy council[2] has imposed upon us, I fear we are all unequal to the task, which we feel to be attended with exceeding great difficulties. The shortest and easiest way (I will not presume to say the best, though I incline to think it so)[3] would be to declare that the French

[1] See pp. 66-67.

[2] Resolution of the Privy Council, August 28, 1767 (Canadian Archives, Q 4, p. 327).

[3] Maseres afterwards receded from this view in his "Criticism of Governor Carleton's Report on the Laws of the Province" (*A Collection of Several Commissions*, London, 1772, p. 50).

laws never had been legally abolished, and therefore still subsist, and then immediately to make these three great changes in them, to wit, 1st, to take away intirely the use of torture or *la question;* 2dly, To abolish the cruel punishment of breaking on the wheel, and to ordain that whoever commits a capital crime shall be put to death either by hanging, beheading, or burning after being strangled, or some other simple and unpainful mode of death; and 3dly, to introduce the substance of the Habeas corpus law, or to ordain that no man shall be imprisoned without a lawful cause of imprisonment assigned in the warrant of commitment, and that if he is so imprisoned, he may be set at liberty upon making that appear before the Judge upon a writ of Habeas corpus. With these three grand improvements it might be safest to let the whole French law, criminal as well as civil, subsist, till time and experience shall point out particular parts of it that require alteration; and then those parts might be amended in the manner requisite. I am sensible it will be said that English Judges, bred at the English bar, will not be very capable of administering French laws: yet I think that with the assistance of an assessor they may do it tolerably well; and I think so the rather, as Mr: Hey has already had occasion to determine two or three cases that turned upon points of the French law, and did it very ably and so as to give general satisfaction. But at least it seems clear that this method, though not without it's difficulties, is attended with fewer than any other that has been proposed: For I really despair of seeing a Code, or compilation of the French laws which are to be permitted to continue here and the English laws which are intended to be introduced, ever made so as to give general satisfaction to the English and Canadians and so as to take away all necessity of having any recourse to the books written on the French law, or of consulting any book whatsoever but the code itself; though it must be confessed that, if such a code was once made by persons of sufficient skill, it would be of wonderful utility. I forgot to mention that in the above plan of the administration of justice in this

province an appeal should lie from the royal courts at Montreal and Three rivers to the royal court at Quebec, for the sake of preserving an uniformity in the decisions of the three different courts, and preventing the gradual introduction of three different systems of law in the three different Jurisdictions or districts of the province. In consideration of the additional trouble arising from these appeals the king's Judge established at Quebec should have a salary of £1200 a year instead of £1000, and his assessor £300 instead of £200, and the king's attorney £800 instead of £600. And perhaps it might be proper to have two judges to this court at Quebec, and two assessors, to give it's decisions more weight. And from this court at Quebec there should lie the last appeal to the king in Council, to preserve his Majesty's Supreme Jurisdiction. And further, it would be convenient to divide the district of Quebec into two and establish a judge for the northern district of it, who should constantly reside at Gaspey, with the assessor &c, as that part of the country is almost too remote to have recourse to the city of Quebec for Justice. All this expence would come within the profits of the Auditorship of the Exchequer. I have been very long; but as it mostly relates to the public concerns of this province, for the welfare of which you have shown a generous attention, I shall make no apology for it. As to myself, I have but a middling state of health, a bad scorbutic disorder keeping fast hold of me, and, I fear, rather gaining ground upon me. The extreme cold of this climate (though not otherwise disagreeable to me) is bad for this complaint by stopping the perspiration. And as the ground is covered with snow during five months of the year, it is inconvenient during great part of that time to take the exercise of walking or riding, as there are no downs to ride upon, no pleasant green lanes, no parks, no forests, or gentlemen's seats to go and see, or gentlemen to visit at them, but the whole is a strip of cultivated country of perhaps three miles deep along the banks of the river Saint Lawrence (which is in most places a mile and a half, or two miles wide,) in which every bit of wood is cut

down, so that there are neither hedges nor trees left, but only fields of corn or grass separated from each other by palings of dead wood, and behind this half-cultivated country the natural wild woods. And what is worse than all, there are few agreeable people here to converse with; so that I had much rather be in England in some of the counties near London, and particularly Surry, (where I lived some time ago at Leatherhead between Epsom and Dorking for five or six summers) with a moderate employment that brought me in £300 or £400 a year, as for instance, a Welsh Judgeship, than be here with one of the Judgeships of my own proposing in the foregoing part of this letter with a salary of three times that value; so that what I have here proposed has been intirely without any view to my own advantage, since my wishes tend so directly homewards. I believe I know enough of this country now to give his Majesty's ministers useful information concerning it, and that is the principal thing I conceive myself capable of doing for his Majesty's service. I have made out a little sketch of the civil government and administration of justice in this province in the time of the French government, together with a collection of some of the French commissions (that of the Intendant in particular) and grants of land of both the tenures,[1] which I believe will be of use for this purpose of information, and which I therefore propose to send over very soon to Mr: Fowler Walker with directions to communicate them to you. I have the greatest satisfaction in your approbation of my conduct since I have been in this province. I have acted in all things according to the best of my judgment and, I trust, without either timidity or harshness. I hope always in all my actions to merit and obtain first, my own approbation and that of the Supreme being, (which I conceive will always go together, as he will always approve what is done with an upright intention) and next the approbation of such

[1] This collection was no doubt the basis of the volume published by Maseres in London in 1772, entitled *A Collection of Several Commissions and Other Public Instruments relating to the Province of Quebec.*

persons as you are. The applause of the uninformed, ill-judging mob may come after or not, as they please; I shall give myself but little concern to seek it. With repeated thanks for the honour of your obliging letter,

I remain your most obedient and faithful humble

Servant, Francis Maseres.

P.S. Mr: Hey and his lady are well. He desires his respects to you, and talks of writing to you soon.

To Fowler Walker, Esq^r.

Quebec, Aug. 11, 1768.

Dear Sir,

I am not sure whether or no I have answered your letter of the 12th of March, which I received in May last. I have therefore writ this to make sure of it, having very little new matter to communicate besides what is contained in three very long letters written in April. I have received last spring a very obliging letter from Mr: Charles Yorke, which I have answered, as I beg you would tell him, because it is possible my answer may miscarry. And give my best compliments to him with many thanks for the honour of his letter. Mr: William Grant of London,[1] who is still here, assures me that he saw the king's proclamation in Governor Ellises[2] handwriting before it was published; and every body says that at that time he was the oracle of the ministry for all American matters. However, the composer of it, whether it was he or another, was certainly mistaken in some of his notions with respect to this province. The claim of the proprietors of Mingan has been rejected.[3] I have seen the opinion of the Attorney and Sollicitor-General De Gray and

[1] See note 1, p. 73.
[2] See note 3, p. 62.
[3] See note 1, p. 52.

Willes,[1] which is very full and well-drawn up, but I think too strict and severe in the animadversions upon the imperfection of the proofs adduced in the State of claims. The public registers here have been for a long time in great confusion: but of late Mr: Cugnet,[2] who has been brought up to the business of the Revenue, with a dash of a law-education in his youth, has been employed to examine them, and has found out many things that were supposed to be lost. Amongst the rest he tells me he has found a register of the grant of the Seigniory of the isles and islets of Mingan. So that a second memorial with further proofs will probably be soon sent to England. The Attorney and Sollicitor-general seem to have been struck and, as it were, frightened at the monstrous extent of the Seigniory of the main-land of Mingan, which is five hundred miles long. They should have been informed, if we had thought of it, in the State of claims that all the land on this extensive coast is a poor barren rock that can never be turned to any account in the way of husbandry or in any other way than by carrying on those fisheries, and that the claimants are extremely ready to resign to his Majesty the whole of this mighty lordship excepting these two or three fishing posts, reckoning each of them to extend about ten miles, whenever his Majesty pleases. I conceive the allowing these claims will be of considerable benefit to this province by reviving the Seal-fishery, and therefore I heartily wish that in the end their representations may meet with success. I continue to think that the parliament ought to settle this colony rather than an house of Assembly: yet the latter is perhaps better than no settlement at all; and if there is one, it certainly ought to be composed chiefly of the landed proprietors, as my lord Hilsborough proposes.[3] The simplest method of composing it seems to be this. As the whole

[1] William De Grey, afterwards Baron Walsingham (1719-1781), was solicitor-general from 1761 to 1766, and attorney-general from 1766 to 1771, when he became lord chief justice of the common pleas. Edward Willes (*ob.* 1787), second son of Chief Justice Sir John Willes, was solicitor-general from July, 1766, to January, 1767, when he was made a judge of king's bench.

[2] See note 1, p. 51.

[3] See note 1, p. 91.

country is divided already into Seigniories, to let two members come from each Seigniory, one to represent the seigneurial interest, the other to represent the interest of the freeholders or peasants of the Seigniory. If the Seigniory is undivided and belongs all to one Seignior, this Seignior himself would of course come in the first behalf; but if the seigniory was in the hands of several proprietors, as is very often the case, and will hereafter be more so, (because Seigniories as well as other inheritances are partible upon the death of the owner amongst all the children, daughters as well as sons, though the rule of partition be somewhat different in the two different holdings) then the seigniorial member should be chosen by the co-seigniors of the Seigniory; and the other member should be chosen by the freeholders or peasants of the Seigniory. If there is an assembly, I heartily wish you may be agent. As to the manner in which you send me your letters, I am indifferent about it, if they do but come safe. I pay no money with so great pleasure as that of the postage of them. Mr: and Mrs: Hey and the Governor are all well.

I remain sincerely your's

F: Maseres.

To Richard Sutton, Esq.re Under-Secretary of State to the right honourable the Earl of Shelburne.[1]

Quebec, August 14, 1768.

Dear Sir,

I received your letter of January 9th in May last, and am obliged to you for the Several particulars you communicate in it—both of a public and private nature. I am afraid the task imposed upon us by the King's order in Council[2] is too difficult to be accomplished, though, if it were well done, it would be highly useful. It is no less than to make ourselves well acquainted with the Laws of this Province in the time of the French Government, to examine and revise these laws, and pass a Judgment upon each of

[1] See note 1, p. 75.
[2] See note 2, p. 95.

them, abrogating some, continuing others, and altering others in a manner Suitable to the present circumstances of the Province. Now that you may Judge of the length and difficulty of this work, I will just mention to you what I take to be the [chief] parts of the law of this country in the time of the French government. The ground work of it is the Coûtume de Paris, the text of which is about as long as our little old law-book called Glanvil de legibus Anglia. But the comment upon it written by Mr. de la Ferriere,[1] an eminent French lawyer, and which is looked upon as the best treatise upon the subject, is contained in three large Volumes in folio, and contains more reading than all my Lord Coke's four institutes. A lesser comment made by the same person,[2] but which is only looked upon as a good book to begin with, is contained in two Volumes duodecimo of a small print, which are by no means easy to understand to an English lawyer (as I know by experience) and are full of references to the large comment and to other treatises of French law, and to the book of the civil law, and to the decisions of cases by the Parliament of Paris published in the French books of reports. Besides this custom of Paris with all these appurtenances the law of this Province consists of a great number of edicts of the King of France relating to this Province, and regulations made by the Governour and Intendant and Superiour Council of this Province, who had a limited legislative authority in it, and lastly of decisions of cases by that Superiour Council, who were the highest Court of Judicature in the Province, and to which Appeals lay in all the inferiour Courts. And these Edicts regulations and decisions are not printed, but kept in register-books that since the conquest to this time, or till very lately, have been in great disorder, though now General Carleton is taking proper measures to have them kept in a proper place and with proper care, and likewise to inquire into the contents of them.

[1] Claude de Ferrière, *Corps et Compilation de tous les Commentateurs Anciens et Modernes sur la Coutume de Paris*, 4 vols., Paris, 1714.

[2] Claude de Ferrière, *Commentaire sur la Coutume de la Prévoté et Vicomté de Paris*, 2 vols., Paris, 1717.

I believe you will agree with me in thinking that it will be next to impossible for Mr: Hey and me to make ourselves masters of all this French law, so as to be able to pass a proper judgment upon the several parts of it. Yet I am glad that an Order of Council has been made upon this Subject, as it shews an attention in his Majesty's ministers to the State of this Province and the necessity of doing something, for the regulation of it. What is best to be done, I protest I do not know. I see difficulties on every Side; which however it is the duty of his Majesty's servants both here and in England not to sink under, but to endeavour to remove.

Before this order of Council arrived here, General Carleton had engaged one Mr: Cugnet,[1] a very understanding man here, to draw up a short abstract, or Code, of such parts of the Custom of Paris as were in force, or rather in use, in this Province: for by a Clause in almost every grant of land in this Province the custom of the Viscounty and Provostship of Paris (without any words of restrictions) is declared to be the law by which the inhabitants are to be governed. Mr: Cugnet accordingly drew up such a Code, and employed several months in doing it. I believe it might contain as much reading as an eighteen-penny, or two Shilling, pamphlet. I believe it was very ably performed, and it was generally thought to be so. Yet it was very difficult to Mr: Hey and me to understand from the great conciseness and the technicality or peculiarity of the French law-language, an inconvenience that was almost unavoidable in a work of that kind. I remember we were above four hours understanding the five first pages of it, though we had Mr: Cugnet at our elbow all the time to explain it to us. In short it was like a lecture upon a chapter of Justinian's institutes. When I did understand it, I thought the several propositions neatly and accurately expressed. But, though it was an able performance, yet from this difficulty of understanding it, it did not seem to be fit for the purpose for which General Carleton seemed to design it,—which was to convey

[1] See note 1, p. 51.

to his Majesty's Ministers a general Idea of the laws and customs that prevailed in this Province in the time of the French government. General Carleton, not chusing to trust to the Judgement of one man in a matter of this nature, shewed it to several of the most sensible French Gentlemen in Quebec, and amongst the rest to the Priests of the Seminary, or Popish College, at Quebec, one of whom, an old man named Jaquereau,[1] is a very knowing French lawyer. He and the others commended the performance and confessed it to be ably executed in many respects, but said that it was too confined—that Mr: Cugnet had omitted whole heads of law that had been, and ought still to be, in force, and that in other places he had been rather too concise. Mr: Jaquereau thought likewise that the method in which Mr: Cugnet had ranged his materials might be changed for the better. Hereupon Mr: Jaquereau and the other Priests of the Seminary drew up another Code in the method they thought best. This displeased Mr: Cugnet, and some of his admirers who said it contained things that were either quite useless and foreign to this Province and never had been practised here, or else such as were no longer fit, or even possible, to be continued here under the British or any other Protestant Government, such as certain privileges and exemptions of the Romish Priests whereby they were distinguished from and exalted above the laymen, things odious in themselves, and much more so to Protestants, and no way necessary to the toleration of the Catholick religion, and therefore not capable of being continued. In short disputes arose pretty high between them about the merit of these two Codes; and a third Set of Gentlemen said that neither of them, nor any

[1] Joseph André Mathurin Jacrau (it is thus he wrote his name) was a native of the diocese of Angers, France. He came to Canada about 1725 and was ordained a priest in 1726. From 1727 to 1737 he was the parish curé at Ancienne Lorette. In 1737 he entered the Seminary at Quebec; and in 1750 he became its attorney. In this capacity he was obliged to know thoroughly the laws of New France, especially those relating to the seigniorial tenure. In the autumn of 1764 he went to France, but returned to Canada with Bishop Briand in 1766. He died on July 23, 1772, and was buried in the vaults of the chapel of the Seminary at Quebec.

other Code whatsoever, could be of any use. For, said they, if it is only to give the Court of England a general Idea of our laws and customs, a letter, or a short general discourse giving an account of the main points of them, the rules of tenure, the laws of inheritance, the power of devising and alienating, the fines or other dues upon alienations or mutations, the laws relating to dower and the operation of the matrimonial Contract, written in English in a familiar Stile will be sufficient; but if the design of making a Code and sending it to England is that the King may enact it and make it the law of the Province for the future, and thereby abrogate at once all that part of our ancient laws and usages that happens not to be contained in that Code, we wish that it may never be sent thither. For to reduce the whole laws anew into writing with a rejection of a great part of it as useless in the opinion of the compilers, is a task of such extraordinary difficulty that not only no person in this province is fit to undertake it, but even the ablest lawyers in the Parliament of Paris, if they were to devote their whole time and attention to it, would hardly be able to execute it properly. If any thing of this kind is attempted here, many important things will most certainly be omitted, and others too concisely, imperfectly, or obscurely expressed. Nor ought any part of the laws of this Province to be omitted, notwithstanding they may never have been put in execution here, for these parts of the custom of Paris are not less the laws of this country than those which have been often put in practice: and the only reason why they have not been executed is that the objects of them, that is, the cases to which they relate, have not yet arisen; when they shall arise, here is a wise law already provided beforehand to decide them. And therefore no part of the Custom of Paris, which is truly the law of this Province, ought to be left out of any Code that shall be made for this Province. Further there is a Strong mutual connection between the different parts of this System of laws that makes it very difficult to change or abrogate one part of it, under a notion of it's being useless, without weakening

and rendering ineffectual other parts of it which the compilers may esteem useful: The only safe way is to let it Stand as it is. And in this view there is no need of a Code to express it over again in new words. It is already expressed in writing in the best manner possible in the learned treatises of la Ferriere and other writers upon it, and the decisions of the Parliament of Paris and the Superiour Council of Quebec upon the cases that have been contested before them. The Code proposed must either be intended as a compleat collection of every part of the ancient laws of this Province that is intended to Subsist, so that all the treatises now written upon that Subject and the reports of cases adjudged by the Parliament of Paris and the Superiour Council of Quebec shall be no longer of any authority, or it must be intended as a kind of institute, not abrogating, but continually referring to, and to be explained by, those treatises and adjudged cases. In the first case it may indeed be of some convenience to an English Judge to save him the trouble of Studying or consulting our law-books but will be a most dangerous and pernicious attempt to the rights and liberties of his Majesty's Canadian Subjects: in the second case it will be a very useless performance, since Mr: la Ferrieres lesser comment upon the Coûtume de Paris will answer the same purpose much better. This was the reasoning of some very sensible Canadian Gentlemen upon this Subject. In short three or four of the principal Seigniors in the Country, who happened to be at that time (which was last February) at Quebec, made so many objections and difficulties upon the Subject that General Carleton did not think fit to send either of the two Codes to England.[1] I have been the longer in this descrip-

[1] In April, 1768, Carleton forwarded to Shelburne a digest of the laws in force under French rule, entitled "Coutumes et Usages anciens de la Province de Quebec" (Canadian Archives, Q 5-2, p. 482). The result of these attempts at codification was seen in the publication in London in 1772-3 of a compilation "drawn up by a Select Committee of Canadian Gentlemen well skilled in the Laws of France and of that Province", under the four titles: (1) *An Abstract of those Parts of the Custom of the Viscounty and Provostship of Paris, which were received and practised in the Province of Quebec in the time of the French Government;* (2) *The Sequel of the Abstract . . . containing the thirteen latter Titles of the said Abstract,* (3) *An Abstract of the Criminal Laws that were in force in the Province of Quebec in*

tion of the proceedings with respect to these Codes or Collections of the laws of this country, that you may fully enter into the difficulties that attend the execution of his Majesty's last order of Council.

Hitherto I have only related to you the difficulties and objections made by the Canadians to the Scheme of making a Code of laws for this Province. You will now perhaps expect I should tell you my own sentiments upon the Subject, and what I conceive would be the best way of Settling upon a permanent basis the laws of this Country, for the future. Now in this I must confess myself to be greatly at a loss what to determine upon, and had much rather that it should be determined by any others than by me. All that I pretend to be capable of doing towards this good work is to represent the State of things in this Province faithfully to his Majesty's Ministers, to give them a general Idea of the laws and Customs by which it was governed under the Crown of France, the Sentiments of the Canadians and the English upon the propriety of continuing them, or altering them, or introducing the laws of England, or collecting the future laws of this Province into a Code, and of the objections and difficulties that have occurred to whatever proposals have hitherto been made or thought upon the Subject. The final decision of the plan to be adopted on this occasion I wish to see made by the judgments of wiser men, of his Majesty's Ministers and Law-counsellors, My Lord Hillsborough,[1] Lord Camdon,[2] Lord Mansfield,[3] Lord Chief Justice Wilmot,[4]

the time of the French Government, (4) *An Abstract of the several Royal Edicts, and Declarations, and Provincial Regulations and Ordinances, that were in force in the Province of Quebec in the time of the French Government, and of the Commissions of the several Governours-general and Intendants of the said Province, during the same period.* The last of these four parts bore on the title-page the name of Francis Joseph Cugnet. After 1774 the parts of this compilation relating to the civil law became a standard for the courts of the province.

[1] See note 6, p. 61.

[2] Charles Pratt, Earl of Camden (1714-1794), was at this time lord chancellor.

[3] William Murray, Earl of Mansfield (1704-1793), was lord chief justice of the King's bench.

[4] Sir John Eardley Wilmot (1709-1792) was chief justice of the court of common pleas from 1766 to 1771.

the Attorney[1] and Sollicitor-General,[2] and Mr: Yorke.[3] However as it can do no harm to debate this matter as fully as possible, I will mention my Sentiments concerning it, loose and uncertain as they are.

In the first place I Join with that part of the Opinion of the Canadian Gentlemen above mentioned in which they Say that a Code of the laws of this Province will be of no manner of use unless it is Supposed to contain the whole law without referrence to any other book, and consequently to abrogate at once all other laws not mentioned in it. I think that if it is not to have this effect, it will be wholly useless, and had better not be made: since, by way of a mere institute or compendium of the laws, the smaller tracts already in print will do much better.

But I am not so clear that the making a Code that did abolish all the laws but those that were contained in it, would be a pernicious measure, notwithstanding the dangers that would arise from it in the opinion of the Canadian Gentlemen above-mentioned. I suppose with them that it would be but a Clumsy performance in all that part of it which related to the old laws that prevailed here in the time of the French Government; but I do not think this circumstance would be attended with such ill consequences as they seem to apprehend. Such Code: though made ever so imperfectly would contain at least the common rules of inheritance in the direct line, the usual rules about the quitrents and other dues of the King and the Seignior, the usual methods of investiture in estate by performing fealty and homage, and the like; which would be sufficient to prevent the country from falling into general confusion, which, if these great points are Suddenly altered, must necessarily be the case. The nicer cases, that happen but Seldom, would not be contained in it, and might probably sometimes be determined otherwise than they ought to be according to the old

[1] William De Grey. See note 1, p. 100.

[2] John Dunning. See note 3, p. 47.

[3] See note 2, p. 68.

laws and Customs of the Country: but these, being but few, would perhaps be of no great importance. And the conveniencies that would result from the use of such a Code would be very considerable and would outweigh the inconveniencies arising from it's imperfection. For in the first place, the English Judges, who will, I presume, always be employed to administer Justice here, would have a short and plain rule to go by which they would easily be able to make themselves masters of, and would not be liable to be puzzled and misled by artful French lawyers, partially citing and misinterpreting and misapplying the doctrines and cases contained in the French law-books; and the English inhabitants in general would have the satisfaction of knowing easily and certainly what the laws of the Province were, upon what terms they purchased lands or houses, what rights of alienation or devising they thereby acquired, what duties to the King, their Lords or their tenants they were bound to, and in what manner their wives and Children would enjoy their possessions after their decease. These would be no inconsiderable advantages resulting from such a code, even though done in a very imperfect manner. But it would be attended with another and Still greater advantage, which would be the removing from the minds of the people all Idea of the excellency of the French laws and government, and of the Superiour Skill and ability of French lawyers and Judges bred in the Parliament of Paris, and consequently of the happiness of having their property decided by them. Perhaps it may be necessary to use more words to convey clearly and fully my Idea of this advantage. What I mean is this. As long as the French laws and customs exist at large without being reduced into a Code, so that the several French law-books, books of reports, and Edicts of the King of France are the books of authority upon the Subject, to which recourse must be had continually in the decision of points of law, the people of this Province will retain a reverence for those Edicts, reports, and other law-books, and the authority of the King of France who made the Edicts, and the Parliament of

Paris that has made the decisions reported in the reports, and the other learned French authors who have composed the other treatises on this Subject; and this reverence will be accompanied with a continuance of their liking for the Government from whence these good laws and Edicts and law-books proceeded and under which they might be most ably administered, and consequently with a Secret wish to return to that Government, that is to return to their Subjection to the Crown of France: whereas if they continued to enjoy the greater part of their former laws and customs under a new name and expressed in a Stile and phrase somewhat different from the former and carrying in it the Stamp of the authority of their present Sovereign, the Idea of the King of France and the Parliament of Paris, and the wise lawyers that compose it, would by degrees wear out of their minds, and they would think of nothing upon these occasions but the King of England and his Code, and his favour and grace to them in continuing to them their principal laws and customs and giving them the express Sanction of his royal authority. This, I must confess, appears to me a very important consideration—There would be no great advantage in abolishing these laws and customs (if the Canadians could be immagined to be willing tamely to Submit to it,) and introducing in their stead the laws of England: Nay perhaps it may be better for the Interest of Great Britain that the inhabitants of this Province should continue to be by laws and customs considerably different from those of the neighbouring Colonies, to the end that they may not Join with those Colonies in rejecting the Supremacy of the Mother country: but whatever their laws are, they should be enjoyed in such manner as not to have the least reference to old France or the least tendency to keep up their connection with it.

As to the inconveniencies that might arise from the omissions and imperfections of this Code, which I all along Suppose would be but a lame performance, it must be observed that they might be continually lessened and

remedied by fresh ordinances from time to time re-enacting those parts of the old laws and customs which appeared to have been forgotten in the Code, and which the Governour and Council thought fit to be re-established.

This code I suppose to contain the whole of the law by which the Province is to be governed, criminal as well as civil, to the exclusion of the whole of the English law, as well as the French, except what was contained in the Code itself, and the Statutes of Great Britain relating to the custom house duties, and those very few other Statutes that expressly relate to this Colony by name since the Conquest of it, or by the general description of *all his Majesty's dominions, now belonging to the Crown of Great-Britain or that shall hereafter belong unto the same.*

Thus much for this first method of Settling the laws of this Province by composing a Code that shall contain all those by which his Majesty intends that they shall hereafter be governed.

There are obviously two other methods, or more properly three, (Since the latter may be divided into two) of Settling the laws of this Province consistently with the intention which I find by a Letter of my Lord Hillsborough his Majesty entertains of Gratifying the Canadians with the continuance of a great part of their former laws and customs.

The first of these methods is to revise at once the whole of the French law, Criminal as well as Civil, with only two or three capital alterations, such as taking away the use of the question or torture to extort confessions from criminals, changing the punishment of breaking on the wheel into hanging or beheading, and enacting a law containing the substance of the English law relating to the writ of Habeas Corpus for the protection of men's persons from *lettres de Cachet*, or other illegal imprisonments. This might be done by declaring that the French law never has been yet legally abolished in this Province, but is in truth Still in force, which for more than one reason I take really to be the case.

This method of Settling the laws of this Province is

evidently the shortest and easiest to his Majesty's servants both here and in England; but it would be attended with the following inconveniencies.

In the first place it would have a tendency to keep up in the minds of the Canadians that respect for the laws of France and the wisdom of the Parliament of Paris and the French Government which has been above described and which it would be one of the principal advantages resulting from the compiling a Code of the laws to extinguish.

In the next place it would give disgust to the English inhabitants of this Province, who are fond of the laws of England and think they have a right to the enjoyment of them upon two distinct grounds.

In the first place they think that every country that becomes Subject to the Crown of Great Britain whether by Conquest, purchase, exchange, or otherwise, becomes immediately subject to the laws of England, and that the laws by which it was formerly governed become immediately and ipso facto void and of no effect, being superseded by the laws of England, without the need of any Act of Parliament or royal proclamation for this purpose. In this, I take it, they are intirely mistaken; for both the express declarations of the law-books and the dictates of common sense inculcate a quite contrary doctrine, to wit, that the laws of the conquered people Subsist in their full vigour till the will of the conquerour is declared to the contrary. However this mistaken opinion is pretty general amongst the English inhabitants of this Province.

In the Second place they say that, Supposing that the laws of England were not of course introduced by the very conquest itself and the Subjection of the province to the Crown of Great-Britain, yet they have been expressly introduced by his Majesty's Proclamation of the 7th of October, 1763. For his Majesty therein encourages his British Subjects to go and Settle in this and the other conquered Provinces then newly erected into Separate Governments, and, to induce them thereto, he informs them that he

has given orders to his new Governours to call Assemblies of the freeholders upon the same plan as in the other Colonies, *and that in the mean time and untill the circumstances of these new Governments will permit such assemblies to be called, they may confide in his royal protection for the enjoyment of the benefit of the laws of England;* and then he goes on and tells them that he has authorized and commanded his Governours immediately upon their arrival to erect Courts of Justice and appoint judges to administer justice according to law and equity. Upon the faith of this paragraph, say the British inhabitants of this Province, we left our native country, our beloved Great-Britain, governed by laws and Customs that we know and love, to come and settle in this Province. We thought in so doing to leave only our Country, the happy climate of Great Britain, and our family connections there, (which of itself was a Sufficient Sacrifice) but not to leave our native laws and customs to be governed by those of a people our Arms have subdued. If his Majesty had assured us that this would have been the case, or even if he had not made us confident of the contrary by his Royal Proclamation, we never would have set foot in this Province. So say the English inhabitants of this Province; and I confess I think they are right in their interpretation of that part of the proclamation. I cannot find any other meaning to it but that of an assurance to his Majesty's British Subjects of an immediate, present enjoyment of the laws of England. I have indeed sometimes been inclined to consider it as a promise that his Majesty will hereafter in proper time and place introduce the laws of England, or rather such Select parts of them as he shall think to be beneficial to them, (the expression in the proclamation being the *benefit of the laws of England*), and not as an actual and present introduction of them. But upon a more careful and often regulated perusal of these words in the Proclamation I now think that the other construction of them which is made by the English Inhabitants of this Province, is the natural and true one.

The next method of Settling the laws of this country,

so as to continue to the Canadians the use of Several of their ancient customs is to make the laws of England the general law of the Province, with an exception of those particular Subjects concerning which his Majesty shall be pleased that the former customs of the country shall subsist. According to this method there must be passed a fundamental ordinance or Proclamation to this purpose, namely, that henceforth the laws of England as they stood in the year 1764, at the establishment of civil Governments in this Province, or at any later period that his Majesty shall please, (but some fixed point of time must be mentioned) shall be in force in this Province, excepting with respect to the inheritance, tenure, and alienation of lands, and to such and such other heads (mentioning them); and that with respect to those points, to wit, the inheritance, tenure, and alienation of lands, and the said other excepted heads of law, the ancient laws and customs of this country that prevailed in this Province at the time of the conquest of it by the British Arms shall still Subsist.

This method of Settling the laws is also a very Short and easy one to his Majesty's Ministers and Servants both here and in England, and is what I incline to think his Majesty's Ministers will adopt. Yet it will be attended with the following inconveniencies.

By preserving a great part of the French law *in the lump*, and by a *general reference* to the French law-books that contain it, it will keep up in the minds of the Canadians that reverence for the laws and lawyers of Paris, and that consequential opinion of the happiness of being subject to the French Government, under which those laws may be most ably administered, which all persons that are Zealously attached to his Majesty's government would naturally wish to see extinguished.

In the next place it will give but an imperfect degree of Satisfaction to the Canadians, at least to some of them, who are rather difficult to please. They will say to us, why do you leave us but a part of our old laws and customs? Why

do you thus mangle an harmonious System that ought to remain intire? Are the parts of this System that you have left out prejudicial to the interest of Great-Britain? Certainly not. Why then should we not be indulged in them? Further we beg leave to remonstrate that the Capitulation has left us in possession of all our lands, noble and ignoble, and all our property of every kind; we ought therefore to be permitted to enjoy our lands with all the privileges and advantages allowed us by the Grants by which we hold them; and it is one clause in every one of these grants that we are to be governed by the laws of the Viscounty and Provostship of Paris. These laws ought therefore, in point of Justice and national honour, to be continued to us, unless the reasons for changing them are extremely urgent. Further, if we must for the future be governed in most respects by the laws of England, with an allowance of only a few of our former laws and customs, we beg to be informed what those laws are, that we may conform ourselves to them and govern ourselves accordingly. Publish these laws in the French language that we may understand them and don't introduce upon us at one stroke a hundred volumes folio of laws written in the English language, which is unknown to us, & written in so Strange and difficult a Stile and with so great want of method that we perceive your own lawyers can hardly comprehend them. Promulgation is necessary to every law before it can be binding upon any Subjects; promulgate therefore these new and strange laws of England that are hitherto unknown to us; and do it in such a manner that we may know and understand them: for it is not to be called a Promulgation of them barely to declare, as the King has done in his proclamation of the 7th of October, 1763, that the laws of England shall for the future be in force in this province or (which comes to the same thing) that his British Subjects may confide in his Majesty's royal protection for the enjoyment of the benefit of the laws of England. This is a concise method of legislation, very new, and contrary to the first principles of legislation, which direct that the will of the law-giver should be

clearly made known to the Subject before he can be bound to conform his actions to it. This will undoubtedly be said by some of the Canadians if this third method of Settling the laws of this Province is adopted.

The fourth method of Settling the laws of this Province consistently with his Majesty's design of permitting some of the ancient laws and customs to Subsist, is to declare that the English law, as it stood in the year 1764, or at some other fixt point of time that his Majesty shall pitch upon, shall be in force in this Province from this time forwards, excepting in the following particulars, to wit, the tenures of land, the inheritance of the same, and the like, (to wit, those several heads of law in which it was his Majesty's pleasure that the former customs of the country should Still continue) and that with respect to these heads the law to be observed should be as follows. And then the several French laws and customs intended to continue should *be Set forth at length* without any reference to the French law-books whatsoever; which is the circumstance in which this fourth method of Settling the laws of this Province differs from the last mentioned, or third method.

This method of Settling the laws of this Province would be preferable to the third method in this respect, to wit, that by enumerating & describing or writing particularly and at length the Several French laws and customs that were intended to be continued, it would cut all connection in the minds of the Canadians with the French laws, lawyers, and Judges, and the Government under which they are maintained. The Parliament of Paris, and the custom of Paris, and the King of France's Edicts would be no longer heard of, as being no longer of any authority. The laws that were permitted to subsist must be cited in the words made use of for that purpose by the King of Great Britain in the Ordinance which permitted their continuance. This would be a considerable advantage which this fourth method of Settling the laws of this Province would have over the third method. But it would certainly be much more troublesome to his Majesty's

Ministers than that third method; and it would likewise be liable to many imperfections from the inaccurate manner in which the French laws and customs intended to be continued would probably be set forth. And it would likewise be liable to the two latter objections made to the third method, to wit, that it would give but an imperfect degree of Satisfaction to the Canadians by leaving them only a part of their ancient laws & customs, and that it would further cause them to complain of the *general manner* of introducing the laws of England without informing them in an exact and particular manner what those laws are that they may know how to obey them.

These four methods of Settling the laws of this country are all the different methods I can think of for this purpose; to wit, 1st. the making a Code of all the laws for the future to be in force in the Province, without any general reference to either the French or the English law-books; by which means all sorts of law-books, both English and French, will be rendered intirely useless, and an inhabitant of this Province need never look out of his little Code to know by what laws he is to be governed. 2dly. To revive or introduce the whole French law in the lump, with a very few alterations that shall be particularly set forth: 3dly. To introduce at once and in general, (that is without enumerating and reciting the several laws that compose it,) the bulk of the English law, as it stood in 1764, or at any other given point of time, excepting with respect to the tenures, inheritance, and alienations of land, and such other heads of law as his Majesty shall think fit to except, and in these excepted heads of law to revive the French laws and customs in general terms without venturing to enumerate them: and 4thly. To introduce the bulk of the English laws in the general manner just-mentioned, excepting with respect to the tenures, inheritance, and alienation of lands, and such other heads of law as his Majesty shall think fit to except, and with respect to those excepted heads of law to revive the French laws and customs by a particular enumeration and recital of them, and without any general

reference to the French Edicts and law-books that contain them.[1]

I do not know any fifth method of doing this business. Which of these four shall be adopted his Majesty's Ministers in England ought, in my opinion, first to determine; and then we might proceed with vigour and Spirit, to the best of our abilities, in the execution of the plan they shall have chose.

To Fowler Walker, Esq^r.

Quebec, Aug: 31, 1768.

Dear Sir,

I wrote to you a few days ago: so shall only say in this letter that Mr: Morgan[2] the legislator, as we use to call him, is come; but nothing is ready for him to carry home. It surprised us a good deal after the account you had sent us that Lord Hillsborough had laid that design aside.[3] He brings no letter from Lord Hillsborough, but only one from Lord Shelburne[4] dated in last September. However, we com-

[1] These are the four methods enumerated in Maseres' "Draught of an Intended Report" (*A Collection of Several Commissions*, London, 1772, p. 1).

[2] Maurice Morgann (1726-1802) was a clerk in the office of the Secretary of State, who had acted as private secretary to Shelburne. On December 17, 1767, he was appointed, as the result of a resolution of the Privy Council (Canadian Archives, Q 4, p. 327), to confer with the officers of government in Quebec concerning their reports on the state of the laws and the administration of justice in the province, and to bring these reports back to England. He arrived in Quebec on August 22, 1768; and he did not return to England until January, 1770. In 1782 he became under-secretary of state to Shelburne, when the latter became Home Secretary; and in 1783 he was appointed secretary to the embassy for ratifying the peace with the American Congress. He was the author of an *Essay on the Dramatic Character of Sir John Falstaff*, London, 1777; and some anecdotes regarding him are to be found in Boswell, *Life of Samuel Johnson*, ed. G. B. Hill, vol. 4, p. 192.

[3] See p. 91.

[4] William Petty, second Earl of Shelburne, and afterwards first Marquis of Lansdowne (1737-1805), had been President of the Board of Trade for a few months in 1763; and he had been Secretary of State for the Southern Department from July, 1766, to January, 1768, when the American Department was created. He remained Secretary of State for the Home Department, but resigned in October, 1768. In April, 1782, he became again Secretary of State for the Home Department; and in July, 1783, on the death of Rockingham, he became first lord of the Treasury; but in February, 1784, he retired finally from official life.

municate very freely and fully with him in obedience to the king's order in council; and I hope he will be pleased with his reception.[1] He is a well-bred agreeable man but not a lawyer; and he has a pompous way of talking that seems borrowed from the house of commons cant about the constitution, &c, without having precise Ideas of what he would say. I have writ a long letter to Dick Sutton,[2] in which I state the four several methods that may be taken of settling the laws of this country, with the several difficulties that attend each of them; to the end that the ministry may advise which they would have us follow, and give us precise directions accordingly. As [it i]s a sort of [public paper] I send you inclosed herein a copy of it fairly transcribed which I beg you would send to Mr: Yorke and to such other persons as you think proper, presenting at the same time my best compliments to Mr: Yorke.

Your's sincerely, F: Maseres.

[1] See Appendix E.

[2] See note 1, p. 75.

APPENDICES

APPENDIX A.

Correspondence relating to the Appointment of Fowler Walker as Agent for the Quebec Merchants.

London, 19th April 1765

Sir/

The merchants traders & principal inhabitants of the Citys of Quebec & Montreal, having by an instrument under their hands bearing date the 29 October 1764 authorised us to appoint an Agent for the Province of Quebec. We therefore in Pursuance of the power & authority wherewith we are Invested, do hereby constitute & appoint you the Agent for the said province, not doubting but that you will give due attention to the Interests thereof—

We are,
Sir
Your most humble servts
DAN: BAYNE
WILL: MACKENZIE

To
FOWLER WALKER, ESQR

London, 20th April 1765

Sir/

A considerable number of the Merchants of the Citys of Quebec & Montreal, having authorised us to engage on their behalf an Agent to Solicit their affairs here, & promising to pay a sum not Exceeding Two hundred pounds to such person as we should appoint, for his services for one year certain

We have therefore thought proper to desire you to be retained, & by virtue of that authority do hereby appoint you to be the Agent for the Merchts of the Province of Quebec, to Solicit at the publick offices such business relative to that Province as may be recommended to you by the said Merchants, & in such manner as you shall judge most conducive to their interests

And we do hereby promise to be accountable to you for the abovementioned Sum of Two hundred pounds for your Services for one Year. We Remain

Sir
Your most hum: Servants
DAN: BAYNE
WM: MACKENZIE

To
FOWLER WALKER, ESQR
Lincolns Inn.

APPENDIX B.

Extract from Letter of Joseph Howard to the Quebec Gazette, *March 31, 1768.*

McGovock will ever be remembered in Canada; and the man that is an adept at Short-Hand will never be forgot: By the false Oath of one I was seized with fixed Bayonets, and confined in Prison four months; and upon the untrue affidavit of the other I should be in Prison now, had I not found sufficient Bail. Swear on in Safety, ye worthy Members of Society, and fear not a Conviction in Canada; should ye be indicted, the Prosecutor for the Crown will appear on your behalf at your trial, and will generously furnish Briefs to your Counsel for your Defence; will write and speak to Jurymen on your Behalves, and make them to believe that to be Law which was never intended to be such.

It is surely the Business of a Judge to weigh well the Evidence that comes before him; and to recommend it with its due weight to the Jury: at the Trial of the famous McGovock, in last Montreal Sessions, for Perjury, where F. M. Esq: and J. W. Esq: were of counsel for the Prisoner, and G. S. Esq: for the Crown, it was prov'd that Mr. Walker saw nobody in his house but were disguised; McGovock swore he was in his house and was not disguised: When McGovock was told he was wrong to swear against people he knew nothing of, answered, "Hold your Tongue, I shall get the Money and my Discharge". Here was a Contradiction in one Case, and Corruption in the other, clearly prov'd on the Trial, but never taken Notice of to the Jury in summing up the Evidence; Whether his Honor forgot it, or Mr. Suckling neglected his Duty in reminding him of it, I cannot pretend to say, but certain it is that was the case.

A man who has been ruin'd in his Fortune and Family by one, amused by another and deceived by a Third, can't help uttering some Complaints. All I will add, is I hope a Time will come, when the Eyes of the Great and Learned will be open, when honest men will be esteem'd according to their Merit, and base and wicked men punished agreeable to their Deserts.

JOSEPH HOWARD.

APPENDIX C.

Answer to Maseres' "Short View of the Bankruptcy Laws", in the Quebec Gazette, *December 24 and 31, 1767.*

Quebec, 19th December 1767

Messrs Printers,

Give me leave, through the channel of your Paper, to convey the following piece to the publick, in your next week's Gazette, which will oblige several of your Readers, and particularly

A FRIEND TO LIBERTY,
THO' NOT A MERCHANT.

A seasonable answer to the "short view of the Laws of England now in force relating to Bankrupts" as published in the Quebec Gazettes of the 10th and 17th instant under the character of a Merchant.

The Introduction of the Laws of England relating to Bankrupts, into this province, has been a matter greatly labour'd of late by the ingenious author of the Short View; but unlucky for him, it has hitherto been attended with almost the same bad success as another Novelty of his, a very curious Performance, intitled ,"a Civil Bill", met with about a Year ago. It might have been imagined that the fate of that Bill, so obnoxious to the publick, and so dangerous to the Rights and Properties of the People here, would have deterred the Gentleman from making another attempt equally pernicious, tho' something different from the former: But, tho' duped and disappointed, he has laid hold of an opportunity which has lately offered, of renewing his former Designs, to embarras and perplex the Merchants and People in Trade here.

A common error has lately prevailed that all the Laws of England have been and are in force in this Colony, since the Establishment of Civil Government here; and this Error has been strengthened by a Favorite Phrase, which the ingenious author commonly makes use of, "That they were all imported here by the Ordinance of the 17th September 1764, and if all, consequently, the Laws against Bankrupts." This seemed to be a lucky Crisis, and by no means to be let slip, by a few worthy Gentlemen, who intended to get themselves declared Bankrupts here, with a laudable design of safely shaking Hands with their Creditors in another Colony. The Gentleman they applied to, and on whose good advice in the matter they principally rely'd, was the author of the Short View, who, from a certain Resemblance in his Person and Behaviour, and some outward marks in his skin, denotes him to stand in some degree of relationship to those Gentlemen, at least a cousin once removed, and who, from certain assurances of a very bountiful reward (if the scheme succeeded) undertook (rather unskilfully, as it may be justly imagined) the solliciting the Business, without distinguishing that the

same Rule of Law, which is very proper and applicable to cases of this kind in England, may if reduced into practice here (Even on the supposition that the laws relating to Bankrupts are in Force here) from the great and apparent Difference and Circumstance of things, become the utter Ruin of Individuals and destructive of publick credit, both in Britain and the neighboring Colonies. Notwithstanding which, the ingenious Gentleman leapt over all Difficulties to render himself acceptable to his cousins; and it must be owned he has been remarkably industrious to prevail upon the Merchants and Traders, both British and French, to a Belief that the admission of the Bankrupt Laws amongst them would be very wholesome and proper; but meeting with repeated repulses from those who are best acquainted with those Laws, and being at length quite jaded and ashamed, of solliciting any further a Business in the way of his Profession, which offered him no further hopes of success that way, he therefore resolved to quit his own Profession, and sollicit the same Business in a Newspaper, in the borrowed character of a merchant, by way of Instructions to those who may not be acquainted with the Bankrupt Laws. For my part, I think he merits great Credit for this ingenious Hocus Pocus Trick, in turning himself out of one Shape into another; but indeed for the benefit of his Relations only.

The Instructor seems to be of opinion, that any other Persons may be Assignees, that have never had any Dealings with the Bankrupt. This Point will not be contended with him at present, as the act of Parliament is silent, and seems to have left the matter at large: But such Instances (if any such there be to be met with in England) are very rare and must depend on very particular Circumstances, which, as we are not yet arrived to that Degree of Credit as the people in England, it would (upon a supposition that the Bankrupt Laws are in Force here) be rather imprudent, if not dangerous to the Community, to adopt his opinion in this Particular: However his Ingenuity cannot be sufficiently applauded, in advantage of the silence of the act, by thus prettily chalking out Places of Profit for some particular Friends of his; and it seems rather surprising that he did not go further, and tell us that he would endeavour to find out another opening in the act, to introduce a Treasurer (which must be another lucrative Place) of all the monies which should come into his hands, from the spoil and plunder of the poor Bankrupt's Estate and Effects.

The Instructor in order to gild over the matter, and that his opinion of a General Bankruptcy might slip down the easier, has told us "that the Expence of a Commission of Bankrupts in this Province will not usually exceed £50, which, for Bankruptcy for large Sums is a mere Trifle." To this I am persuaded he is out in his Arithmetick—for if he had said £300 instead of £50, he would have been nearer the Mark, as it is well known that Commissioners of Bankrupts in England, in general, cost near £400, and I have good Reason to think that, that Expence would rather be increased than lessened in this Province.

The Instructor has put it as a Question, "Whether it will be beneficial or not to this Province, that the Bankrupt Laws should take place?" The answer is, That it will be the utter Ruin and Destruction of many an honest Merchant and

Trader in this Province, but very beneficial to some of his friends, and the Gentlemen of the Law. Will it be required to give any further proof of the Instructor's leaving England, to live in the Wilds of America for the Good and Service of his Country?

Let it be supposed that the Bankrupt Laws do extend to this Province, and, upon that Supposition, any Gentleman should be prevailed upon to act as a Commissioner, yet, if an Action should afterwards be brought against him by the Bankrupt, wherever he should meet with him in any other Province or Place, for illegally seizing and possessing himself of his Goods and Estate, and the Extension of the Bankrupt Laws to this Province should become a Question in another Jurisdiction, will Mr. Instructor's singular opinion, that there is good Reason to think that they are already introduced "here", be of any Weight in determining the Question? And if it should be determined against the Commissioner, will he not be in danger of being ruined? Or at least of being put to very great Expences. And whether the Bankrupt Laws do or do not extend here, will the Instructor's Cousins Intentions of being made Bankrupts here be answered, unless it can be proved, that a Certificate which they may claim from their Creditors here will be a sufficient Bar to the Demands of their Creditors in another Place? Which I think is impossible.

Many particular Reasons which I omit might be urged from the Statutes against Bankrupts, to shew that those Laws are intirely local, and cannot extend here. But the main, and indeed the only material question to be resolved is, whether those Laws do or do not extend to this Province? The Instructor has avoided giving his Solution of the Question, as he only says "That there is good Reason to think that they are already introduced". I shall therefore take the Liberty of giving my Opinion, That they are not, nor cannot be introduced into this Province.

The Position is, and which is undoubtedly clear law, that Englishmen carry the laws with them wheresoever they go; and that every new Colony, till it has a Legislature of its own, is in general subject to the laws of the country from whence it originally sprung; but that all of them (according to Mr. Instructor's opinion) without Distinction, are to be supposed binding upon the people, is neither agreeable to Law or Reason, and would effectually destroy the settling the Colony with British subjects. The Laws which they carry with them, and to which they are subject, are such as are absolutely necessary to answer the Intention of their coming here, such as are requisite in their present state, for the Advancement of their and the general Prosperity, such, without which they will neither be protected in their Lives, Liberty, or Property; and I hope it will not be denied that the People here are and may be sufficiently protected in their Properties, without the admission of the Bankrupt Laws. The Truth of the matter seems to be, that the Instructor grounds his Opinion upon a wrong Principle, by insinuating that they were introduced by the Ordinance, which seems to be erroneous, for it cannot be proved (as it is clear it cannot) that they were introduced upon the Establishment of Civil Government here in August 1764, it is

then, I think, as clear that the Ordinance did not give them any greater Extension than they had before the making of it; and upon a Supposition of there being any Weight in Mr. Instructor's Doctrine, it will follow that a thousand Laws may be introduced amongst us, inconsistent with the state of this Province, and destructive of its Inhabitants, both British and French; and I should not be in the least surprised, to find the ingenious Instructor as warmly solliciting and contending for the payment of Tythes, the establishing of Ecclesiastical Courts, and the Introduction of all their odious Tribe of Officers and Attendants amongst us.

It seems strange that any one should be sollicitous to lay so great a Burthen on our shoulders, when the common Law of England is (as it seems) the only clear Rule and Direction, for the Protection of our Civil Rights and Properties, for if we wade into the Statutes we shall be in a Labyrinth, and who will lead us out? For I fear no Man could then tell what the Law is: It is certain all of them can't bind, and to know which do must yet remain a doubt, notwithstanding Mr. Instructor has boldly ventured to cut the Knot, which, with all his Learning and Reasoning, he never could have untied. Those of the Statutes that are declarative of the common Law, serve as Evidences; but whether those, which do not mention the Plantations, have any binding Quality upon us as Statutes to affect our Civil Rights and Properties, I must leave to abler judges to determine.

The Instructor has fallen upon a method of dividing and subdividing, into Parts and Pieces, some objections which have been raised by others, against the Introduction of the Bankrupt Laws (which I have not leisure at present to answer) seem rather to confuse than ellucidate the Matter.

He observes that in Scotland they have their "Cessio Bonorum", and in New-York, that there is likewise a Law relating to Bankrupts very much resembling the English Law. It is true that in Scotland and other countries that adopt the Civil Law, the "Cessio Bonorum" is of excellent use: But will it from thence follow, that the Laws relating to Bankrupts in England would be of the same use here? Or can the Introduction of them here be any Reason, because New-York, or the other Colonies, have considered those Laws as an excellent Model, and have, whenever they found it necessary to make a Law resembling the Laws against Bankrupts in England, contented themselves with borrowing a few slips from the old Root, which, being inserted into their Laws have proved very beneficial; but Mr. Instructor is so unreasonable, that nothing less than the Root and all will content him.

I shall take leave of the Gentleman for the present, by concluding in the Words of the late Attorney-General Sir Dudley Rider, afterwards Lord Chief Justice of the King's-Bench, who, on an opinion, which he gave, against the Extension of the Statute of Frauds and Perjuries to the Island of Barbados, declared "It would be acting the Part of an unskilful Physician, who should prescribe the same Dose to every Patient, without distinguishing the Variety of Distempers and Constitutions".

APPENDIX D.

Maseres to "Mr. Secretary Sheridan of the Treasury".

Inner Temple, Jan: 2, 1783.

Sir,

I have looked over Mr: Monk's bill of charges for business done in examining the grants of Lands and establishing the King's rights as attorney general of the provinces of Quebeck; and I observe that he refers to an ordinance of the Province passed in the year 1780, on the 9th of March, as a justification or authority for charging 36 shillings for each attendance on the Governour together with his opinion upon each of the king's grants of Seigniories. This ordinance I have not seen. But, if it is as he states it, (which I suppose it is,) it seems to be a sufficient ground to support his demand on account of those opinions. When I was in the province, I used to charge (if I remember right) one guinea for every time I was summoned to the Council, as an assistant, and also for every time I attended the Governour by his order to consult with him, or give him my opinion upon any point. And, if I had had written questions of length or difficulty proposed to me to be answered, I should have charged one guinea, or more, in proportion to their length and difficulty. My charges for business of every kind done for Government during the whole three years of my residence at Quebeck, from September, 1766, to September, 1769, amounted to £588, which Lord North and the other Commissioners of the Treasury in the year 1770 readily allowed of and ordered to be paid. Upon the passing of the Quebeck act, the standing Salary of the Attorney-General of the province, which in my time was only £150 a year was increased to £300 a year. Whether this was done with a view to take away the fees due to the Attorney-General for business done for the crown, or not, I do not know. I believe General Carleton meant it so; as he always expressed a great disapprobation of rewarding the officers of Government by fees. But I can hardly think the Lords of the Treasury in 1775, who made this augmentation of the Attorney-General's Salary, could mean it so; for, if they did, they rendered the whole profits of the office rather less than they had been before. And this opinion seems to be confirmed by the provincial ordinance of the 9th of March, 1780, to which Mr: Monk alludes. Yet, as I imagine very many of those 125 grants of Land which Mr: Monk examined, must have been almost word for word the same with each other, perhaps it might have been reasonable in Mr: Monk to make some abatement in the charges to Government for his opinions concerning them on that account. I am your most

Obedient and humble
Servant,

FRANCIS MASERES

APPENDIX E.

Maurice Morgann to the Earl of Shelburne.

Quebec 30th Augt. 1769.

My Lord,

I have been detained here untill this period by Reason that the Reports concerning the Judicature of this country have not been finally settled.

I have had nothing very interesting to inform your Lordship of from Hence excepting only the state and condition of the Country, which your Lordship will now collect from the Contents of the inclosed papers. I ought however to have transmitted those accounts sooner and I have no sufficient excuse for not doing so except the imperfection of my own Health and Temper, too fond of Procrastination and too apt to content myself with my own good Intentions without carrying them into Execution. I wish I was more worthy your Lordships Regard but such as I am your Lordship may be assured of my most perfect attachment without any further expectations of advantage whatever. I am ashamed to inform your Lordship that I am greatly limited in time with respect to this Letter, I ought doubtless to have been prepared and not to have subjected myself to have been hurried by an unexpected Information that the bearer of this Letter is immediately to imbark—I am therefore compelled to comprize what I have to say in as few words as possible.

I received upon my coming hither much personal Civility but I thought very little Confidence. Mr. Maseres, the att$_{ey}$ General was employed to draw up a Report in Conformity to the Order of Council. It was the latter end of February before it was compleated and when read was so extreamly defective and improper that the whole was rejected with Resentment by Mr. Carleton. It was indeed a strange Report and in my Judgment so improper that when I afterwards came to write one I could not avail myself of one single Idea contained in it. At this time Mr. Hey desired that I would endeavour to draw one. I wished at that time to go to New Jersey and return in the Spring to Canada, but the General condescending to make the same Request and as I had before procured the necessary Information I undertook the work and before Mr. Hey's return had finished the Report so much to the satisfaction of the General that he engaged me to undertake two other Reports on the Subjects of Religion and Revenue. Those likewise I finished before Mr. Hey's Return, and Nothing I understood was wanting but the formality of signing. However some time after Mr. Hey's Return the Report on the State of Judicature was supposed by Mr. Hey to be ill arranged and Mr. Hey undertook to reform it in a Report to be drawn up on the same Subject by Himself. His Report was not finished 'till towards the latter end of June and contained only the same Facts and Information with mine, but without proposing any specific mode of alteration. It was indeed undertaken upon the motive, and that motive was frankly communicated to me, that it would not appear decent that a Report on such a subject sho^{d} be drawn up by a Stranger and that it wo^{d} carry with it if such a fact sho^{d} be known, less Weight and Dignity an Argument that I

thought reasonable and co^{d} not help acquiescing in. However when this Report came to be read Mr. Carleton came to the Resolution of rejecting Mr. Hey's and sending mine. This Resolution however was altered and another taken namely that Mr. Carleton wo^{d} by Himself combine Both and make any other alterations that should occur as proper and this is the Report which I am now to carry Home. It does not vary in any material point whatever from that which I inclose. The Report which I inclose is exactly as it was first wrote and given in to the General. The General has however had from me since, three or four additional Pages of which I have no Copy and I have made some Additions likewise to the generals Report as it now stands. It has been determined that my Reports on the Church and Revenue sho^{d} not be sent at least in the shape of Reports.

I inclose my Report concerning the Church, that on the Revenue tho' longer, is less interesting and the Report itself of which I have no Copy is in the Possession of the General. I like wise send your Lordship an Ordinance drawn up by me which has not yet been considered and therefore I cannot tell what alterations it may undergo. When I am dismissed from Hence which I hope will be in a Fortnight I take the way of New York for England and whether your Lordship be in or out of Town shall presume immediately to wait on you.

I have endeavoured to execute my Commission for Lady Shelburne but I am afraid imperfectly. A very few days will now determine whether Mr. Carleton has had leave to come to England. If he has I believe we shall imbark together at New York tho' I shall leave this Province before Him. I very highly esteem Mr. Carleton for his very many good Qualities and it appears to me that his Prudence and Moderation is very essential at present to the security of the Province. I will not trouble your Lordship further at present but only beg your Lordship to believe that I am with the most perfect Sincerity

Your Lordship's ever obliged and
obedient Servant
MAURICE MORGANN

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